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THE CONSTITUTIONAL  
HISTORY OF ENGLAND

# The Constitutional History of England 1216-1399

VOLUME I

**POLITICS AND THE CONSTITUTION**  
**1216-1307**

*In Preparation*

VOLUME II

**POLITICS AND THE CONSTITUTION**  
**1307-1399**

VOLUME III

**THE DEVELOPMENT OF THE CONSTITUTION**  
**1216-1399**

# THE CONSTITUTIONAL HISTORY OF ENGLAND

## 1216 - 1399

WITH *SELECT DOCUMENTS*

VOLUME ONE

POLITICS AND THE CONSTITUTION

1216 - 1307

*By*

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Common wealthes and governmentes be most occupied, and be most diverse in the fashion of five thinges: in making of battell and peace, of truce with forraine nations: in providing of mony for the maintenance of themselves within themselves, and defence of themselves against their enemies: in choosing and election of the chiefe officers and magistrates: and fiftly in the administration of justice. The firste and thirde we have shewed is doone by the prince in parliament. The seconde and fourth by the prince himselfe. The fift remaineth to be declared.

—Sir Thomas Smith, *De Republica Anglorum*,  
ed. by L. Alston (Cambridge, 1906), 63.

## Preface

SINCE Stubbs' *Select Charters*, there has been no volume, or volumes, setting forth the main documents of importance for a study of medieval English constitutional history, although Miss Lodge and Miss Thornton have provided a selection from 1307 to 1485.<sup>1</sup> The present volume is one of a series which is planned to cover the whole medieval period. Though much of the material has been gathered for the project, and though the publication of later volumes will, it is hoped, not be long delayed, I have decided, after a good deal of hesitation, to offer this section alone, as the first instalment. It must therefore carry a word of explanation regarding the grounds there are for thinking that a new publication of select documents is justified, and regarding the lines which will be followed in subsequent volumes.

Stubbs' *Select Charters* was a masterpiece of selection and condensation. It would be very hard, indeed, to improve Stubbs' work, whilst following the plan that he adopted. All that we could do would be to bring it up to date. The first edition of this classic appeared in 1870 before the first volume of the *Constitutional History*. Eight editions were published in the lifetime of Stubbs. For three generations it has been one of the most influential little books in all the leading English and American universities, and it is still a standard work. H. W. C. Davis, in the ninth edition, published in 1913, made no great changes in the plan or in the text. Himself a scholar of fine judgement and an experienced teacher, he did not feel that there was any need to carry revision

<sup>1</sup> E. C. Lodge and G. A. Thornton, *English Constitutional Documents, 1307-1485* (Cambridge, 1935).

beyond the task of bringing the *Select Charters* up to date.

Yet it was inevitable that Stubbs' underlying assumptions and principles of selection would, in the end, need as much revision as the details of scholarship which Professor Davis took in hand. Stubbs' whole interpretation of the evolution of the medieval constitution has inevitably, because of its very virtues, had to withstand three generations of comment and criticism, some of it possibly unjustified, but some of it unanswerable, either because it was based on a wider knowledge, or because it was the product of changed assumptions and beliefs. The following pages attempt to do what Davis did not do, to reflect these changes by a different and wider selection, and not merely to follow and correct Stubbs in the light of recent research.

Of course the core of Bishop Stubbs' collection remains. It contains the most essential documents that lie at the heart of the study of the medieval constitution. Some of these, however, have been abridged in the present volumes. It has been felt that the more detailed clauses of even the most famous enactments have sometimes mainly an antiquarian interest; and this applies even to some of the clauses of Magna Carta. It is more important to illustrate the spirit and purpose of even such a unique charter as this than to set forth every clause which it contains. Only by such a rigorous curtailment of the longer documents can space be found for the wider selection which is intended here.

This wider selection arises out of a conviction that the constitution of a country, at any moment, is the outcome of forces even more comprehensive than Stubbs represented them; it is the expression of a way of life which is all-inclusive, the balance of all the many factors which go to make up a civilization. Of these, the political tradition of the nation is perhaps the most important. Indeed,

medieval constitutional development can be regarded, from one point of view, as an attempt to relate the accepted political traditions to the changing institutions and social and economic conditions. Whilst documents illustrating these changing conditions may not, perhaps, be properly classified as belonging to constitutional history, constitutional changes cannot be understood without them, and so, even at the risk of offending the purist, some are included here.

In the second place, more prominence is given in this approach than in that of Stubbs, to the political conflicts of the period. The reason for that is not that the growth of the medieval constitution was primarily the outcome of conflict between the monarch and the magnates. Conflicts did actually determine the course of constitutional development in England on many occasions in the Middle Ages. But behind the conflicts there were deep forces at work which were more important still, and did, in fact, go far towards determining the outcome of each particular conflict which occurred. Nor did the medieval constitution evolve simply as a result of a long-drawn-out clash of interests and aims, between king and barons, expressed in the recurrent political crises. In a strong and progressive polity like that of medieval England clashing interests do not determine the pattern of the state. This is determined, not by what divides a nation but by what unites it. The true pattern was created in the thirteenth and fourteenth centuries, not by the great political struggles which are the main theme of the first two volumes of this survey, but by the common effort of Englishmen, within and outside the periods of crisis, to translate their common heritage into the institutions and practices of the state.

On the other hand, what divided Englishmen, in their great political conflicts, was something more than personalities on the one hand or selfish interests on the other.

The great struggles were not simply for power. They were the outcome of a clash of principles and ideals. They were based on conflicting interpretations of the common good. Nothing less would have gained sufficient support for the great movements of baronial opposition which repeatedly brought England into, or to the verge of, civil war. This is what makes these conflicts supremely important for the historian of the medieval English constitution.

Such an interpretation has its own dangers. There is a risk of idealizing men like Edward I or Thomas of Lancaster, and of ignoring personal ambitions, selfishness, or love of power. The balance which I have attempted to strike in the following pages will certainly not commend itself to all readers. Finality in such matters is perhaps unattainable. No doubt much more space could have been given to personal issues; but perhaps, after all, the proper study of the constitutional historian is of trends and principles. It seems possible to place these in the forefront of the picture without losing sight of the fact that, in the last analysis, even the constitutionalist deals not with ideas or institutions, but with men.

Such an approach does at least seem to be an aid to perspective in interpreting the significance of the political crises of the thirteenth and fourteenth centuries. It makes it difficult to accept the conclusion of Stubbs, for example, that "from the date of Magna Carta to the revolution in 1399, the barons and the commons were banded in resistance to the aggressive policy of the crown."<sup>2</sup> Both the monarchy and the people were

<sup>2</sup> *The Constitutional History of England*, III (5 ed.; Oxford, 1903), 520. There has been a notable increase of attention paid, of recent years, to the monarchy and its claims. These are discussed, incidentally, in the work of Fritz Kern, especially *Gottengnadentum und Widerstandsrecht* (Leipzig, 1914), though Professor Kern is preoccupied with the traditions and claims of the prelates and barons. For a translation of part of his work and a helpful commentary see Fritz Kern, *Kingship and Law in the Middle Ages*, trans. by S. B. Chrimes (Oxford, 1939). Alongside this, and directly con-

aggressive, on different occasions. Each sought for justice; but they differed as to what constituted justice. The commons were far from being simply the defenders of the nation's liberties; the kings of England, from Henry III to Richard II, had a formidable case, without which they could not have withstood the claims of the opposition for any length of time. All were victims of circumstances as well as the makers of their own history. The nice interaction between the individual and his environment still provides, and will long provide, a major problem for the historian. No attempt has been made below to find a solution to such a problem. But an effort has been made to bring out the nature of the deep forces contributing to each major crisis; and perhaps one result has been to redress a little in favour of the monarchy, the balance which was struck by Bishop Stubbs.

There is one final difference between this collection and the *Select Charters* which may create some dissent amongst at least a number of readers. In the *Select Charters* Stubbs did not spend much time in discussing the problems which confronted the historians of his generation. He gave little indication of all the doubts and uncertainties of constitutional history, of which, as a great scholar, he was very well aware. The documents in the *Select Charters* were not intended so much to enable the student to form his own opinions about such

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cerned with the monarchy, is Percy Schramm's *History of the English Coronation*, trans. by L. G. Wickham Legg (Oxford, 1937). The present writer drew attention to the same problem in "The Coronation Oath of Edward II" in *Historical Essays in Honour of James Tait*, ed. by J. G. Edwards, V. H. Galbraith, and E. F. Jacob (Manchester, 1933). Since then, a good deal has been written on the coronation and especially the coronation of Edward II. Reference is made to this in my article "The Coronation Oath of Edward II and the Statute of York" (*Speculum*, XIX, Oct., 1944, 445-70). I attempted to give sympathetic attention to the point of view of the ruler in my *Studies in the Constitutional History of the Thirteenth and Fourteenth Centuries* (Manchester, 1937). Professor Galbraith has some wise words to say on this subject in *Roger of Wendover and Matthew Paris* (Glasgow, 1944).

uncertainties, as to illustrate the historical truth. They were *Select Charters and Other Illustrations of English Constitutional History*, intended as "primarily a treasury of reference, an easily handled repertory of the *Origines* of English Constitutional History; and secondarily, a manual for teachers and scholars."<sup>3</sup> They were the accompanying material for a presentation of causes and consequences, rather than for the solving of an endless succession of problems, with the study only in its preliminary stages, and the end not even in sight.

The following selection is intended not only to illustrate the facts of constitutional history, about which most of us are agreed, but also the problems which confront us at the moment, arising out of modern research. In some ways, these problems are the most important part of the study. They are the points at which the student is challenged to use his own judgement; they represent history that cannot simply be learned by rote, history which is in the making, incapable of sustaining dogma, still a venture into pioneer fields in pursuit of truth. Documents are not merely illustrative. They provide original material on which judgements must be made and by which theories are to be tested. Of course we ought not to give so much attention to the differences that exist between us that we miss the truths which are generally accepted, and the great generalizations, the working of cause and effect that Stubbs could so well portray. On the other hand, if we obscure the differences completely, we tend to obscure one of the supreme attractions of original documents, the thrill and fascination of handling the raw material of history, for the first time, and for oneself.

There are, of course, great difficulties in the way of an attempt to indicate, and also to give some materials for judgement on, the problems of the medieval constitution. The first is that the presentation may seem merely con-

<sup>3</sup> Preface to the first edition (1870); reprinted (9 ed.; Oxford, 1913), xv.

tentious, lacking altogether in the dignity and serenity of Stubbs. This is, however, not a serious matter. Differences of opinion between scholars are necessary to the continued vitality of our subject. All we should ask is that they do not obscure the great agreement that lies behind them, or interfere with mutual restraint, co-operation, and respect. After all, more than most scholars, historians depend upon each other. These are truisms which it should not be necessary to utter. Nor should it be necessary to say with what respect I regard the opinions, even those with which I do not agree entirely, which are referred to in the pages below. No one can now attempt to understand constitutional and political problems of the thirteenth century without discovering what a vast debt he owes at every turn, not only to older historians like Stubbs and Tout, but also to contemporaries like F. M. Powicke, E. F. Jacob, J. G. Edwards, R. Trehearne, and N. Denholm-Young. Their views have usually been followed in the pages below. At the same time, I have tried to bring out differences and express my own occasional doubts and hesitations. These may not, in the end, prove to be valid, though I hope that they will not seem to be altogether unreasonable. In any case, what the student is invited to do is to make his own evaluation of the problems. A full reference to the work of these contemporaries has been given at the head of every chapter, and a fairly wide variety of documents is translated below.

The second difficulty is that of the selection of these documents. Students of the thirteenth and fourteenth centuries are singularly fortunate in this respect. For the most part, they can congratulate themselves on having neither too little material for their studies nor, what is perhaps even more embarrassing, too much. Still, the problem of selection is a very difficult one, and becomes almost insoluble after the middle of the fourteenth

century. I do not pretend to have solved it very satisfactorily; but I have two sources of consolation. In the first place, no serious student of history would ever be content only to read documents selected for him by another, and never on any account, merely translations. In the second place, the printed sources are easily accessible, and full references have been given to them in the text. From then on the matter depends on the interest and initiative of the student himself.

A third difficulty lies in the fact that the problems themselves are so constantly changing. Some of those which are discussed below have, at the moment, an exaggerated importance. This is certainly true of the first problem in this volume which is set forth at such length only because there is no modern treatment of the constitutional questions involved. Still this difficulty, again, is not serious. There is bound to be a lack of proportion, even in a book of documents, if there is any originality at all. The introduction to each volume makes some attempt at a general survey, by binding together the separate problems, and giving perspective to the whole.

The three volumes which follow deal with the years 1216 to 1399. There is no particular unity in this period, except that it begins after the great landmark of Magna Carta and ends with the almost equally great landmark of the deposition of Richard II. My reason for dealing with it first is that it is the one with which I am most familiar, though much material has been gathered for the periods before. The plan for dealing with the constitutional development during the years selected, is indicated at the outset of this work. It will be followed, with some modification, in the next period to be dealt with, that from 1066 to 1216.

I cannot close the preface to this first volume without some reference to the importance of the subject. Stubbs

could write his *Select Charters* in the belief that he was illustrating the steps by which our forefathers laid the foundations of modern parliamentary democracy. The foundations were those of a structure which was destined to endure. They themselves were not important. Their importance was that of the structure they sustained. Today, we are perhaps more acutely aware of the continuity of history. We value the Middle Ages as providing not so much the foundation as the pattern of our civilization. We appreciate more the underlying identity of our twentieth-century way of life with that of our medieval predecessors. We have to study the Middle Ages not merely as a foundation but for their own sake. They were a period when our own constitutional ideals and traditions, which still continue and without which our civilization cannot live, were simply and vigorously expressed.

Through reasons which cannot be discussed at this point, but which may later become more apparent, England was one of the most perfect transmitters of this medieval constitutional pattern. To bring this out properly would need a comparative study of constitutional development in the various countries of Europe, which the present writer is not competent to offer, and which, in any case, could find no place in the present work. The truth is that the full significance of English evolution only becomes apparent in comparison, at every point, with that of the kindred communities in Europe. Yet, without in the least obscuring the large measure of identity, of origin and of fundamental pattern, between all the countries of Western Europe, in the matter of constitutional practice and tradition, the equally important fact must be insisted upon, that the lines of constitutional evolution were not, in the end, the same. Whilst Spain, Italy,<sup>4</sup> and even France were laying, in the later

<sup>4</sup> For a brief discussion of the constitutional development of the various city states, see M. V. Clarke, *The Medieval City State* (London, 1926).

Middle Ages, the foundations for the absolute monarchies of the sixteenth, seventeenth, and eighteenth centuries, and Germany was turning from bankrupt Imperialism to the evolution of princely rights,<sup>5</sup> England built so firmly the foundations of limited monarchy that not all the growth in the power and ambitions of rulers from the fourteenth to the seventeenth centuries could change the course of English evolution. Some of the theories of writers like Petit-Dutaillis or Fritz Kern about European constitutional development in general do not, perhaps, apply so readily to England as has sometimes been assumed. At any rate, the present volumes will be confined essentially to English constitutional development, but no one would wish to stress more than the present writer, that this was part of the European; and it must be insisted that European developments have not been, and cannot be, ignored.

It is partly due to this firm conviction as to the value of the study of medieval constitutional history, not only as a training for young historians, but also as a unique introduction to basic ideas and traditions in our European way of life, that I have translated the documents below. This translation of sources is a serious departure from the standards of Stubbs which needs justification. In the first place, whether we like it or not, the fact is that many students in the past, and very many more in the present, could not and cannot use the *Select Charters* in the way Stubbs intended. They find the originals hard to understand. Documents are of no use if students do not read them. It is better to have them used freely in translation than not used at all.<sup>6</sup> In the second place, no student, as

<sup>5</sup> The Leagues of Cities were in a different category; but even they failed to sustain the medieval principles of limited sovereignty and government by consent.

<sup>6</sup> This has already been accepted by the authors of such excellent collections of documents in translation, as that of G. B. Adams and A. M. Stephens, *Select Documents of English Constitutional History* (London, 1924); and Carl Stephenson and F. G. Marcham, *Sources of English Constitutional History* (New York, 1937).

suggested above, who can read or wishes to learn, medieval Latin and French, need stop short at the English texts. My own efforts at translation are intended strictly for the beginner. For others, some of the most important passages have been repeated in the footnotes in their original form. As to the rest, I am at the mercy of the experts. All I ask is that they remember the limited purpose which the translations are intended to serve.

The plan which has been followed below involves a good deal of repetition. This seems to be unavoidable if the more detailed studies are to be given their proper background and fitted into the whole. Moreover, in attempting to state some of the problems of the period, I inevitably found myself trying to solve them. Perhaps, in this, I have fallen between two stools. The introductory chapters will not always satisfy the specialist, who wants more detailed evidence than I have had the space to provide. The student, on the other hand, will frequently find the chapters very heavy-going. But the specialist can always look after himself. I have not aimed at any appearance of finality in my presentation. I believe that such an appearance in our state of knowledge is quite illusory. In any case, I could not pretend to it. Nor would the specialist accept it. As for the student, there is no need for him to try to get out of the volume more than he feels that he needs. The intention is to get him interested in the problems of constitutional history and let him see that there are plenty of these behind almost any document he cares to pick up. I have found that a good student, if he is interested, will take a reasonable amount of detail and drudgery in his stride. He can always omit the parts which he finds repugnant. The practice of selection, even within the limits of a single volume, is part of a liberal education; and it is part of the good teacher's function to help the student to select.

There remains the pleasant task of thanking those who

have helped me in this work. First and foremost I would like to record the never-failing co-operation and encouragement of my wife. I would like to thank Professor G. B. Flahiff, of the Pontifical Institute of Medieval Studies, and Dr. N. B. Lewis of Sheffield University, for reading the proofs of this volume, and Professor H. L. Humphreys of University College, for his help in translating Document III, Chapter V, below. My colleague Mr. M. R. Powicke has both read the proofs and helped me with the Index. Sir Maurice Powicke, with great generosity, both gave me wise counsel and lent me the proofs of his *King Henry III and the Lord Edward*,<sup>7</sup> to which frequent reference is made below. If these references occasionally seem like patchwork, that is because my own work was completed before I discovered that Professor Powicke's fine volume was in the press. I was happy, indeed, to find few major disagreements. Where these have occurred, I have tried to indicate them fully in the footnotes or in the body of the work. And I must add a final word of thanks to Miss A. E. Morris for her patience and efficiency in providing editorial services and seeing the book through the press.

<sup>7</sup> (Oxford, 1947), 2 vols.

B. WILKINSON

TORONTO, JUNE 1948.

## Abbreviations

*B. J. R. L.*, *Bulletin of the John Rylands Library*.

*C. H.*, *Stubbs, The Constitutional History of England*.

*C. M. H.*, *Cambridge Medieval History*.

*C. P. R.*, *Calendar of Patent Rolls*.

*E. H. R.*, *The English Historical Review*.

*S. C.*, *Stubbs, Select Charters and Other Illustrations of English Constitutional History*.

*T. R. H. S.*, *Transactions of the Royal Historical Society*.



# Introduction

## I

NEVER in English history, perhaps, were the political and constitutional problems more closely related than in the thirteenth and fourteenth centuries; and never were they more directly affected by the process of development and growth. To say that the period was one of transition is almost meaningless. It has been, and can be said, of any age. But the pace was very rapid at this period. The development of the institutions of government, the first beginnings of nationalism, the growth of wealth, the changing conditions of warfare and the decline of the relative force of the ideal of the Catholic church, all caused constitutional problems which seemed almost insoluble, and gave rise to sharp political strife. But strife, in the medieval period, was the product of maladjustment, not of decay. There was a great unanimity about the essentials of the political and constitutional order, though there was sometimes sharp conflict about the application of political and constitutional ideals. This was peculiarly the case in the reign of Henry III.

Henry's reign was, in its early stages, dominated by four great factors: firstly, by the legacy of Magna Carta and the civil wars; secondly, by the character of Henry himself; thirdly, by the direct influence of his Minority, the first in England, since 1066; and lastly, by the impact of rapidly changing conditions as suggested above.

When all has been said of Magna Carta as the key-stone of English liberties (and more will be said on this subject in a subsequent volume) the fact remains that it was imposed upon the English monarch by rebellion and

force. It represented a great landmark in the achievement of the balanced English constitution of the later Middle Ages, but a great humiliation for the ruler. From his point of view, the idea of "national" revolt associated with Magna Carta might become a serious threat to efficient rule. In its first issue, it contained clauses which were too extreme to be continued, and which were later dropped, apparently by universal consent. Its supporters, if not its principles, were defeated by the royalists who rallied to the young king Henry on the death of his father. Before its adoption by Henry himself, or at least by the royalists who acted for him, in November, 1216, it had become the platform of a party which was attempting to save itself by calling in the French, despite the fact that nationalism was beginning to take its place for the first time since the days of Edward the Confessor, as an appreciable factor in English political life. In his reaction against the extreme consequences of Magna Carta, Henry III was, in his own mind, the restorer of monarchy in England, as consciously as, and more determinedly than, Charles II.

On the other hand, the English magnates had never surrendered the aims and ideals with which they had confronted Henry's father. In their triumph against John, an able, ruthless, and formidable opponent, they had passed through experiences which brought them far towards a new political maturity and a new sense of their functions and duties in the state. They had produced adequate leaders and great cohesion; they had established the *universitas Anglie*, the community of barons and prelates, as the partner of the monarch in the state, armed, in the last analysis, with the terrible weapon of revolt. Revolt was, of course, a common and recognized form of feudal opposition, long before Magna Carta; but that of 1215 had been the first national, and perhaps the first politically constructive revolt in England since the

Norman Conquest. The acceptance of Henry in 1216 in no way represented, to the magnates of England, a complete surrender of their programme; in any case they could not, if they would, renounce the legacy of the experiences of 1214-16.

The situation was complicated by the character of Henry III. It is hopeless perhaps, at this distance of time, to attempt an analysis of that character. H. W. C. Davis, Bishop Stubbs, and, more recently, Professor F. M. Powicke, have all summed up their impressions in masterly sketches, and were agreed on the salient points.<sup>1</sup> One thing seems certain; Henry's abilities, though considerable, were incommensurate with his ambitions. He was for ever trying more than he could achieve. His obstinacy wore out the most patient of his subjects; his tricks and evasions destroyed confidence in his word. He more than once built up an opposition which was as unanimous and formidable as that which had confronted John.

But perhaps Dante, who placed Henry in the region of purgatory reserved for simpletons and children, and Stubbs, who thought that his character was hardly worth analysis, except as a contrast to that of his brilliant rival Simon de Montfort, both ignored the peculiar difficulties which confronted Henry, the real core of ability which lay at the heart of his complex character, and the complications of his reign. Few English monarchs have had a less auspicious beginning; few have weathered so many storms, to come out at long last, if not triumphant, at least retaining, and even adding to, the substance of royal power. Henry's personal gifts, if not striking, were considerable. In happier circumstances his obstinacy might have passed for determination, his mismanagement might have been obscured by the measure of his success.

<sup>1</sup> *England under Normans and Angevins* (7 ed.; London, 1921), 411-12; *C.H.*, II (Oxford, 1887), 102-3; *King Henry III, passim*.

His tragedy was not his mediocrity, but his mediocrity confronted with immense problems which would have daunted the greatest of English kings.

Something of these problems will be indicated in a moment. Meanwhile it must be emphasized that nearly all of them were made more acute by the Minority. This naturally strengthened the magnates in their participation in the acts of government, that is, in their partnership with the monarchy; but an even more important consequence, perhaps, was the way in which the Minority sharpened and defined some of the constitutional problems of the time and emphasized the difference which Magna Carta had made in the constitution. When he gained his Majority, Henry III was confronted not only with the vast and incalculable consequences of the successful baronial revolt against his father; he was also faced with the important and equally incalculable consequences of his own tutelage, and of the policy he had pursued in order to get the government of the country safely and completely into his own hands. If he had but known it, the results of all these things were in the long run almost wholly beneficial to the country; but he did not know it, and could not be expected to know it. From the standpoint of a good loyalist the monarchy might well seem to have suffered some terribly destructive reverses and almost irretrievable losses since 1199 when John had succeeded to the throne.

One of the changing conditions which greatly affected the development of the constitution under Henry was that of foreign policy. He had the effects of the loss of Normandy as well as of Magna Carta to contend with. Foreign policy was almost as insoluble and disastrous a problem for Henry as it was later for Edward II and Richard II. France and Wales presented the same difficulties to him as France and Scotland did to his successors in the fourteenth century. No English monarch could

have undone the work of Philip Augustus in Normandy and Poitou or found the going easy against Llewellyn Ap Jowerth in Wales. Not only England, but also Europe, was on the threshold of the era of the national state; and the inner cohesion and outward pressure of the English nation were being met by similar manifestations of thirteenth-century political vigour in Wales and Scotland and France. Helped by her geography and her constitution, England ultimately more than held her own in the consequent struggles of the thirteenth century; but she steadily lost ground in the reign of Henry III. This was not all the fault of the ruler. It is true that his campaigns against France in both 1230 and 1242 were incompetent and unsuccessful; but the joint campaign of Henry and Edward in 1257 against Wales achieved no greater success. On the other hand, it is certain that Henry was no general, and that even his diplomacy was mediocre, though he achieved some successes by it in his visit to Gascony in 1253-54. The diplomatic background to the Sicilian episode which precipitated the crisis of 1258 has recently been brilliantly expounded; but in its essentials Henry's Sicilian policy still seems, at this distance of time, to have been quite impracticable. It is hard to escape the conclusion that, making every allowance for his difficulties, Henry himself was primarily responsible for the failures of his foreign policy and wars. In any case, it was mainly by the monarch that the consequences of the failures were felt.

Henry's foreign policy was only partly dictated by his overseas needs and ambitions. It was, in one sense, the complement of his policy at home. Like Edward III, Henry desired successes in diplomacy and war for the sake of the restoration of the monarchy. He needed victories to gain not only territory but also prestige. Part of his weakness was due to this connection between foreign policy and domestic pretensions. It increased both

the reluctance of Henry's subjects to support his overseas adventures, and the evil consequences, for the ruler, of failure abroad.

However, the nation, or at least the magnates, contributed to this failure, even though the full assumption of responsibility at the time was discouraged or denied by the king. Circumstance demanded a fuller contribution from the magnates to the national efforts of the thirteenth century than they normally showed themselves willing to make; and their unwillingness cannot be altogether excused by the attitude of the king. The wars and foreign policy of England could no longer be adequately supported by the thirteenth-century traditions either of military service or of finance. The feudal levy was inadequate; it could no longer produce the ancient assessment of knights for the king's service, even if they had been sufficient for Henry's needs; and both the greater and lesser magnates steadily refused any expansion of the ancient system of service to meet the new conditions of the age. The scutages and feudal aids which Henry could demand from his subjects were no longer adequate to finance his government and armies; and the additional aids, levies of fifteenths and fortieths and so on, of personal property, were very reluctantly granted and made on condition of what Henry regarded as impossible demands.

The trouble was that the *universitas regni* were normally allowed little share in, and consequently took little responsibility for, the foreign policy of the king. When they were consulted, as in 1242<sup>2</sup> and 1257, their advice was sound, but it was not followed. In any case, advice alone, even sound advice, was not sufficient. Henry also needed assurances of support, and it was these which

<sup>2</sup> Matthew Paris, *Chronica Majora*, ed. by H. R. Luard (R.S., 1872), IV, 185-8; C.H., II, 59; Powicke, *King Henry III*, I, 298. A translation of this debate is given in another volume.

were not forthcoming. The magnates, in 1242, would only consider an aid if Louis IX of France refused to await the expiration of the existing truce before going to war. They would give no assurance to Henry as to how generously they would aid him if he followed their advice and waited for the expiration of the truce. Henry ignored their wise counsels, extracted money by questionable methods, and waged an ignominious war against Louis. We may unreservedly condemn his actions; but it is clear that the magnates offered him no real inducement to follow their suggestions. As far as can be seen, it was the king who, in 1242, was to make all the concessions. The barons promised nothing in return except goodwill. Henry's policy seems, at this distance of time, to have been indefensible; but that of the barons was mostly unconstructive. Foreign policy and war had not yet been brought effectively within the orbit of the nation. Until they were, there would continue to be a gulf between the royal demands and the offers of the nation which nothing could entirely fill.<sup>3</sup> The magnates would never entirely approve of a policy in the making of which they did not participate, nor whole-heartedly support a war brought on, as it seemed, almost entirely by the personal wishes of the king. The problem of government in the thirteenth century was certainly complicated badly by the short-

<sup>3</sup> See S. K. Mitchell, *Studies in Taxation under John and Henry III* (Yale, 1914), and W. E. Lunt, *Financial Relations of the Papacy with England to 1327* (Cambridge, Mass., 1939). There is no comparable study of military service in the thirteenth century, though valuable work has been done by Miss H. M. Chew, in "Scutage under Edward I" (*E.H.R.*, XXXVII, July, 1922, 321-36), and by the same author in *Military Service of Ecclesiastical Tenants-in-Chief* (Oxford, 1932). See also Sidney Painter, "Studies in the History of the English Feudal Barony" (*The Johns Hopkins University Studies in Historical and Political Science*, LXI, Baltimore, 1943, 337-538); N. Denholm-Young, "Feudal Service in the Thirteenth Century" (*History*, XXIX, Sept., 1944, 107-19); besides the invaluable work of J. E. Morris, *Welsh Wars of Edward I* (Oxford, 1901); also A. H. Noyes, *The Military Obligation in Medieval England* (Columbus, Ohio, 1930). Questions of finance and war will be studied in detail in another volume of this present work.

comings of Henry; but it was difficult enough, even apart from this, because of the changing political conditions; and the magnates, like the ruler, had no clear solution to the particular problems created by foreign policy and war.

But it was the changing domestic problems which really governed the relations between Henry and his magnates. To understand these it is necessary to say something, however brief,<sup>4</sup> about the political traditions of the English people in the thirteenth century. These were already, in some features, beginning to be distinctively English. They had largely been worked out since the Norman Conquest, but had their roots deep in Anglo-Saxon soil. Put in their simplest terms, they were a concept of government as an act of co-operation between the monarch and the people, under the ultimate sovereignty of the law which was a product of both. Government was completely and unquestionably monarchical, in the sense that the monarch had sole control over the executive. The medieval government was the king's government. It might almost be said that it never, at any time in the High Middle Ages, entered the heads of the majority of the nation that it could belong to anybody else. In the eleventh and twelfth centuries it had, indeed, been the king's government in a very concrete and convincing manner, in that it had been a personal monarchy, a government in which most of the important commands for executive action came directly from the person of the king. Now, since the age of Henry II, the government was rapidly becoming more bureaucratic; the king was beginning to recede into the background and his ministers were performing many of the acts of government for him, in his name; but the

<sup>4</sup> This is not intended as a discussion of political theory, which is given in another volume.

government remained, nevertheless, and beyond question, that of the king.

Whether it was personal or bureaucratic, the king's government in the Middle Ages existed for the good of, and acted in co-operation with, the "nation" as this was conceived at any given time. Government was, indeed, even in the thirteenth century, largely self-government, not only for the larger magnates but also for the lesser landowners and townsmen, those classes later represented in parliament by burgesses and knights of the shire.<sup>5</sup> The monarch still depended to a considerable extent on the nation for the instruments through which to exercise his functions, just as the nation depended on the monarch for the mainspring of its government, its peace, and its law. This was less true at the end of the thirteenth century than at the beginning; but even Edward I, as he implied by his famous letter of August 10, 1297, was, in the final analysis, dependent on the active support of the nation for all his imposing royal power.

This co-operation necessitated agreement, and agreement logically entailed discussion and consent. The real basis of the medieval state was not a long-drawn-out struggle between the king and the magnates, based on opposed and irreconcilable interests and aims. It was exactly the opposite—a rough identity of interests between the ruler and the politically articulate and active section of the nation, which was based on a support of, and belief in, the political order which sustained both alike, and was fostered by the bonds of social intercourse, a common education, and a common membership in the knightly class. The king was the first among his equals, surrounded, like Arthur, by the knights of the round table—the royal round table revived by Edward III—discuss-

<sup>5</sup> See A. B. White, *Self-Government at the King's Command* (Minneapolis, 1933).

ing his problems with them, formally and informally, and depending on their co-operation in peace and war.

This is perhaps an ideal picture. It was frequently distorted by cross-currents of passion, obstinacy, and self-interest, on either side. But it was the accepted ideal throughout the Middle Ages. The real and astonishing progress of this period was largely the outcome of a successful political order and of the virile faith of the community in its way of life. Periods of strife and dislocation deserve special study because of their own intrinsic interest, because of the attention they received from contemporary writers, and because of the light they throw on the problems of the time. But they still remain the exception. They do not reflect the normal outlook of the monarch and the people. The medieval state was based on traditions and loyalties which were accepted and, for the most part, unquestioned. It was backed by practical experience. It commended itself to the nation as expressing their tried and successful way of life.

The main reason why there was so much political strife in the Middle Ages is that, in a virile and progressive people, new needs and conditions are always challenging, and being resisted by, the old tradition and the accepted procedure. This was so in the reign of Henry III. The accumulating wealth of the nation, the increasing diffusion of education and governmental skill, and the rapid spread of the king's law began, cumulatively, to transform the Angevin problem of government. The thirteenth century witnessed a very sharp accentuation in the power of the monarchy, and in the growth of the institutions of government, already marked in the age of Henry II. It saw the rapid development of Chancery, Exchequer, King's Bench, Common Pleas, and the Privy Seal. It saw a rapid development, within the institutional framework, of the process of specialization, localization, and disintegration which is discussed in another volume. It saw the

working out of a complicated and efficient system of warrants for ministerial actions of all kinds, by which alone the personal monarchy could be transformed into a bureaucratic government of the modern type. This meant, incidentally, that the ground was prepared for the idea of ministerial responsibility in the modern sense, though this notion was very far from being clearly formulated in the minds of Englishmen in the reign of Henry III. It meant also that grave problems, political and constitutional, were created which, despite some good intentions on the part of both king and barons, could not be easily solved.

The chief of these problems, in the thirteenth century, as in any medieval century, was the problem of sovereignty, the exercise of the royal power. In the early years of Henry III it expressed itself particularly in two great institutions, the *magnum concilium* and the *concilium regis*, which lay at the centre of authority, next to the king. It will be suggested elsewhere, indeed it has already been suggested,<sup>6</sup> that these were two different institutions, with very different antecedents and functions in the state. The one was the outcome, in however feudal a dressing, of the ancient Germanic concept of limited monarchy. It stood for age-long traditions of co-operation between ruler and subject on the basis of discussion and consent. The other represented, and evolved from, the universal necessity of any ruler to act with some personal advice. The one had possessed some form of organization as early as the Anglo-Saxon Witan; the other had no definite form or function as late as the reign of Richard I. The place of the older body in the constitution had never needed, and had never yet been capable of definition, but the ideas which sustained it had a secure place in the English tradition. The place of the newer body, and even the ideas behind it, had still to be worked

<sup>6</sup> *My Studies*, 1-54.

out in the rapidly changing order of the age of John and Henry III. Both institutions had, in the new circumstances of the thirteenth century to be related more clearly to each other, to the monarch, and to the nation. Their changing functions and fluctuating personnel had to be constantly readjusted to the established traditions.

The main constitutional problem was not, as in the days of John, that of curbing the particular misdeeds of a government which now pressed directly upon the nation; it was the more elusive one of defining the general terms on which the increasingly powerful and increasingly bureaucratic monarchy should function in its relations with the people. Magna Carta, in spite of its preoccupation with particular and concrete questions, had proclaimed the rule of law and the co-operation of the *communitas regni* in the acts of government. It was left to the successors of John's rebellious barons to attempt the working out of these principles in more specific terms and in the more complicated framework of the thirteenth-century state; above all, to attempt the establishment of the principle of co-operation in the councils, as an agreed basis for the joint political action of the nation and the king. This apparently simple extension of the ancient traditions proved to be extraordinarily difficult to achieve, and the problems relating to it underlie much of the political strife of the reign of Henry III.

The question of the king's councils was closely bound up with another problem, that of the distinction between the different kinds of business disposed of by the king. From one point of view there was, of course, only one kind of governmental business—the king's. The ruler's functions, in the medieval state had, in one sense, no limit, except the limit of justice and law. The monarch was, and always had been, responsible for the welfare of all his subjects, even though his actual intervention in the lives of most of them had, until the reign of Henry

II, been very slight. Nothing happened in the thirteenth century to change this tradition; indeed, the sphere of the king's intervention in the lives of his subjects was steadily enlarged. Where the problem arose was in the complementary question of the co-operation of monarch and subject. Tradition was strong that some aspects of government primarily concerned the monarch; they were *negotia regis*. Others affected both the king and the nation. They were *negotia regis et regni*, and were in some sense to be disposed of by agreement between the nation and the king. The crux of the problem of sovereignty for the generation of Henry III lay in the steadily increasing impact of the *negotia regis* on the nation, and the expansion of the *negotia regni*, in the eyes of the nation, to include every important royal act. The ruler claimed the right to dispose of affairs of state in his "Privy" Council; the nation demanded that these be discussed in the general assembly. What was at issue was not merely the nature and scope of the new councils. Behind this was the deeper question of the share of the community in the government. On the answer to this would depend the whole future of the English state.

What the earlier conception of the *negotia regis* was, as distinct from the *negotia regis et regni*, we do not know. Much research remains to be done on that point. All we know is that Henry II had consulted the *universitas regni* about the most important problems of government, but that, as far as we can learn from conditions in the absence of Richard I<sup>7</sup> from England, or in the Minority of Henry III,<sup>8</sup> the business of the king which did not necessarily involve the co-operation of the nation included almost every aspect of government, except the obtaining of extra grants from the *communitas*

<sup>7</sup> See "The Government of England during the Absence of Richard I on the Third Crusade" by the present writer (*B.J.R.L.*, XXVIII, Dec., 1944, 485-509).

<sup>8</sup> See chap. i, below.

*regni*, important changes of the Common Law and, possibly, the action of leading the nation into war. Moreover, the traditions of personal monarchy attributed all initiative, in every matter, to the king. The function of the community was only to discuss and consent; and what they were to assent to depended solely on what was proposed by the king. These traditions may occasionally have been questioned before 1215; we know too little about the earlier constitution to be sure. In any case, they were bound to be questioned increasingly with the growth of political consciousness of the magnates, with the increasing contribution of the *universitas* to the government, and with the increasing pressure of the government on all the freemen in the state. The attempt to restate these traditions regarding the business of government to satisfy the new conditions of taxation, military service, and foreign policy was the greatest single constitutional preoccupation of the reign of Henry III.

## II

THUS the way was prepared, by all these developments and complications, for the discords and troubles, as well as for the progress and achievements, of the reign of Henry III. On the one hand, the magnates had achieved a tremendous extension of their claims. On the other, despite reverses, the monarch had achieved a revolutionary expansion of his functions and effective powers. A new practice of the constitution had to be worked out to preserve harmony and stability, and this seems to provide a key to the history of the relation between politics and the constitution in the long reign of Henry III. Henry's policy throughout seems to have been fairly simple. Like Henry II, he tried to ignore as much as possible the reign of his predecessor, and to enforce the ancient traditions of government, fortified by the new powers the monarch

acquired from the expanding machinery of state. The barons, for their part, tried to continue the spirit as well as the details of Magna Carta into the new conditions of Henry's reign.

The beginnings both of Henry's policy and of the baronial reaction to it are to be found in the Minority. In his attempts to solve some of the problems referred to above, the young monarch was supported by the Papacy, and in consequence he was backed in the early stages by many of the bishops. Taught and encouraged by Peter des Roches and above all by Hubert de Burgh, he asserted from the very first far-reaching claims on behalf of the Crown. He established his personal control, over part of the business of state, at his second coronation in 1220 and in the letters which he got from Honorius III, in 1223. The latter, it was thought, declared that Henry might, in future, ordain the business of the kingdom principally by the counsel of his own servants. The terms of this letter, if they have been correctly represented, were ominous for the future. Already they enhanced the distrust felt by the magnates of the methods of Henry and Hubert. Thus the constitutional basis of Henry III's monarchy was in dispute from the first moment of his personal rule.

In a final declaration of 1227 Henry took over all the royal business. What was of such decisive importance for the future was the basis on which he took it over. He received it, not as a concession from a council of regency or from the nation, but as an assumption of royal power authorized by the Papacy, giving the supreme direction of affairs in the kingdom, not to king and *universitas regni* acting together, but to the ruler and his *domestici*, or to the ruler and Hubert, with no clear reference to the underlying partnership between the people and the monarch which was the unwritten basis of the state. The successive stages whereby Henry

moved away from complete tutelage at the hands of the Earl Marshal, *rector regis et regni*, to complete control over all the government, with no dependence even on the bishops, represent an attempt by the young ruler, not only to achieve his lawful inheritance, but also to establish it upon a basis of extreme royal claims, perhaps as far-reaching in relation to the central problem of sovereignty as anything put forward by John.

The relations of Henry with Hubert de Burgh, in this period before 1232, were on a basis of mutual advantage; but whilst Hubert's gains were partly selfish and transient, Henry's were lasting accretions to the claims and traditions of the Crown. The important declarations of his Majority in 1223 and 1227 were not only steps out of tutelage; they were also clear landmarks in the unfolding of Henry's general constitutional policy before the nation. The stifling of the opposition to them was much more than the triumph of Hubert over his personal enemies and the defeat of selfish magnates; it was also the over-riding of the first, ineffective, constitutional opposition to the restoration of the monarchy, after the reverses of the reign of John. Henry III and the Papacy, foreign "favourites" like Peter des Roches, and English royalists like Hubert, were all united on a basis of conservatism and legalism, in a reasoned and formidable attempt to recreate an English monarchy which, bypassing the failure of John, though not rejecting Magna Carta, would go back to the great days of the twelfth century for its inspiration, would make proper use of the tremendous new forces at its disposal, and would be comparable, in its powers and functions, to the monarchy of Philip Augustus or Frederick II.

Thus Henry III had a policy which was possibly as clear-cut, relative to the political theory of his generation, as that of Charles I. The history of this period can no more be understood without reference to the deep, underlying constitutional problem than the history of the early

Stuarts. Henry's policy was in no sense anti-feudal, or even deliberately anti-baronial. It was based on a lofty concept of monarchy and the royal duties, just as Charles I's was. But, like that of Charles, it was, at bottom, inimical to the liberties of the subject. It was this which, all through his reign, aroused against Henry such an uncompromising opposition. His actions, there can be little doubt, very early placed the problem of the royal authority squarely before the nation. If the problem was not openly and specifically discussed in these early crises, that is because men of that generation had a habit of hiding great issues, even whilst fully conscious of them, behind particular grievances and the clash of personalities. It was also, perhaps, because of the fact that though the magnates understood clearly the general nature of Henry's position, they had not, as yet, grasped all the implications. Above all, due to the novelty of the constitutional problem and the political acumen of the king's advisers, the barons were not yet prepared with any policy of opposition. All that the opposition to Henry III could devise at this period was a demand for the reissue of Magna Carta in 1225, which did not settle the new problems,<sup>1</sup> and personal attacks on Hubert de Burgh in 1223 and 1231, the only ultimate result of which was to throw Henry into the hands of Peter des Roches. The nation was, in fact, deeply divided by the events of the Minority. The barons lacked a leader and a solution. Henry had achieved an astonishing and brilliant success in his attempt at royal restoration. It is no wonder that he entered, confidently and even rashly, on the development of his policy, under the conditions, apparently more favourable still, of his personal rule.

<sup>1</sup> Its issue with the clause "by our spontaneous and good will" instead of the "consilic" clause of earlier issues, perhaps illustrates the intention and outlook of Henry's government in 1225. It is difficult, as Professor Powicke has recently shown, to exaggerate the importance of Magna Carta in the general history of the constitution; but, except for a few debatable clauses, Magna Carta seems to have been accepted beyond question by the government of Henry III.

## III

UNDER Peter des Roches, the policy of royal restoration was even more effective than it had been under Hubert de Burgh. Peter des Roches and Peter de Rivaux made a prominent use of the new council and the new ministerial skill, to replace the personal ascendancy of the Justiciar by something which was, in the eyes of the magnates, still more threatening to the established order. Henry's grant, in 1232, to his Chancellor, his Treasurer of the Exchequer, and his Keeper of the Wardrobe and Privy Seal, of their offices for life, was an obscure but ominous measure which seemed to create an irremovable nucleus of royal advisers with unprecedented influence and powers. His grants to Peter de Rivaux included the custody of the Wardrobe, the Chamber, and the Treasury of the king's Household.<sup>1</sup> "For a short time this comparatively obscure official had more authority than any of Edward I's great officers ever acquired or than Thomas Cromwell exercised at the height of his career as the agent of Henry VIII."<sup>2</sup>

It was these new councillors, largely ministerial, who apparently took upon themselves great responsibilities in the campaign against Richard Marshal, the leader of the opposition to Henry's policy, in 1233-34. The fact that they were efficient did not make them harmless to the constitution: quite the reverse. It seems impossible to believe, under the circumstances, that all Henry was interested in, when he made these remarkable changes, was administrative reform. With the help of his new advisers, he proceeded to claim the fullest possible share for the monarch in the disposal of *negotia regis et regni*, and to concede the smallest possible share to the nation.

<sup>1</sup> T. F. Tout, *Chapters in Medieval Administrative History* (6 vols.; Manchester, 1920-33), I, 216. The most recent account of Peter's position is by Professor Powicke, in *King Henry III*, 86-8.

<sup>2</sup> *Ibid.* 86.

He gave free rein to the new and aggressive "Privy" Council, and the most restricted possible functions to the old great council of the realm. The famous letter of "betrayal" of 1234, discussed in detail below, by which Richard Marshal was brought to his death in Ireland, is and probably was, a revelation of the extent to which the destinies of the country, and of the magnates in particular, had fallen into the hands of a few intimate advisers, headed by Peter des Roches and including, as far as can be seen, none of the leading barons or bishops. Abiding by what he considered to be the ancient political tradition, the king was destroying, by his interpretation of his rights and duties, what the magnates considered to be the foundation of political stability in the realm.

The opposition now began to grasp clearly both the nature of the royal aims and the implications of the royal policy; but they had, as yet, no effective claims and policy of their own. The Archbishop of Canterbury condemned Henry for disposing of the *negotia regni omnia*, so as to exclude the nobles.<sup>3</sup> Matthew Paris said that the king ordained all the *negotia regni* simply by the counsel and wish of Peter des Roches and Peter de Rivaux.<sup>4</sup> Barons and bishops united solidly to condemn the policy of the government, in the movement which preceded and followed the death of Richard Marshal in Ireland in 1234. But, apart from its appeal to the principles of Magna Carta, which were not explicitly denied by Henry, it was only a negative stand against the formidable and strongly-grounded programme of the king. The sole object of the magnates who were in opposition, apparently, was to supersede the counsellors of Henry whom they did not trust by counsellors whom they did. The new advisers they accepted were not even barons or bishops, but ministers like those they displaced. All the

<sup>3</sup> Matt. Paris. *Chron. Maj.*, III, 205.

<sup>4</sup> *Ibid.*, III, 240.

magnates asked Henry to do was to admit that his old advisers were evil and take new ones in their place. They asked for no guarantees and no modification of general policy. At the famous reconciliation at Gloucester they allowed Henry to pose as a ruler who had been cruelly deceived by his servants, not as one who was challenging their position in the government of the state.

Their action shows how uncertain the nation felt before the stubborn claims of the ruler, how anxious they were to believe that his claims were the result of youth and inexperience, and how much they underrated the magnitude of the problem posed by his policy. Despite the value and significance of the check the magnates administered, in 1234, to the immediate claims of the monarch, and despite the constitutional importance of their appeal to *Magna Carta*, their opposition should, perhaps, be regarded as achieving only a limited success.<sup>5</sup>

One hopeful feature was the action of the bishops. The fact that they now threw in their lot so completely with the opposition showed how deep and strong was the tradition of Stephen Langton, and how stubbornly the clergy contested the right of the Papacy to impose on them its policy of support of the king. It is evident that the aims of Henry, when they were fully understood by the magnates, evoked national opposition comparable to that of 1215. No medieval English monarch was able to withstand such an opposition for long.

The issue was partly obscured for some years after 1234 by the king's preference for foreigners as his intimate advisers. The barons were hostile even to Simon de Montfort in 1238 as being another potential seducer of the ruler from the English tradition. But it is doubtful, on the one hand, how far the resentment was really due to the foreign origin of these advisers; on the other hand,

<sup>5</sup> The different conclusion of Professor Powicke, in *King Henry III*, is discussed in chap. II, below.

how far the support which the foreign “favourites” gave to Henry was derived from ideas they imported from abroad. It is true that Louis IX was just beginning to build up in France a monarchy with more autocratic—possibly more Roman—traditions; and it is true also that exalted notions of sovereignty were emanating from the court of Frederick II. But, as a matter of fact, the English objected to upstarts of their own nationality just as much as to those from other countries; in 1237, according to Matthew Paris, John, Earl of Lincoln and Geoffrey the Templar were more hated by the barons than the foreigners themselves.<sup>6</sup> Any adviser, even a Hubert de Burgh with his vast services to England, who supported Henry in his policy, was hated by most Englishmen. Just because of this, the king found it easier to recruit his closest advisers largely from abroad, from men who had everything to gain by undivided loyalty to his service, some of them, as is now commonly admitted, efficient and of great value to the state. Though Henry was more than half French in descent and possibly in outlook, his political aims were the universal consequence of the evolution of the medieval monarchy and the medieval community. There was no need, in England, to import them from abroad.

But Henry III’s claims and policy during the years following 1234 met, and have always met, with widespread condemnation. It is possible that this has sometimes been carried to excess; and Professor Powicke’s objective and detailed analysis of the events of this period serves to set the failures and friction in their proper perspective, indicating the complex balance of circumstances and events which went to make up this not inglorious reign. Henry had to walk delicately and with circumspection amidst many difficulties and pitfalls. One example of these was the famous alliance between

<sup>6</sup> Matt. Paris, *Chron. Maj.*, III, 412. See p. 24, below.

monarch and Pope. This was one basis of all Henry's political reconstruction. Hence ultra-“Papalism” was as necessary in the final analysis, and as fatal, to Henry III, as high Anglicanism was later to be to Charles I. His obvious dependence on the Papacy, in face of the increasing hostility and outspoken protests of the nation, clergy and laity alike, against the financial policy of Gregory IX and Innocent IV, brought him great unpopularity and helped to build up a national opposition. When all has been said, and there is much that can be said, in Henry's favour—his treatment of Master Martin, his strong defence of this or that right against the Papacy, his preoccupation with affairs of the wider European stage—the fact remains that no English monarch was ever quite so conscious of the ultimate need for Papal support in his relations with his subjects as was Henry, and no English ruler, in the end, paid a higher political price for that support.

The weaknesses of Henry's foreign relations have already been touched upon. In spite of these, it is probable that it was Henry's domestic policy which, in the long run, destroyed the stability and credit of his government. He continued to push to excess the powers and influence of the administrative officials, whilst keeping them ostentatiously subject to the personal wishes of the king. Soon after the disgrace of Peter des Roches, Peter de Rivaux, Stephen Segrave, and Robert Passelaw in 1234, Henry reinstated them to favour. He maintained them, or others like them, in control over his administration and at the core of his “Privy” Council until 1258. They largely took the place of his great ministers, some of whom were tainted by the influence of the Minority. After the death of Ralph Neville, who had claimed that he had been appointed by the great council, Henry probably kept vacant the office of Chancellor for

many years,<sup>7</sup> ruling through Keepers of the Seal. He stripped the old Justiciarship of its pre-eminence in the state. There was no real successor to Hubert de Burgh. He regarded all his ministers as his *domestici*, subject to no influence save his own. In 1239 he deprived the Keeper of his Great Seal of his instrument of office, because he had refused to seal a writ granting Thomas of Savoy, titular Count of Flanders, a grant on every sack of English wool carried through his land.<sup>8</sup> The new bureaucracy of the thirteenth century was to be simply the expression and extension of the royal power, despite the fact that much of it was employed on the *negotia regni*, with which the *universitas regni* had a traditional concern. The novelty and intractability of the problem this presented was not the least of the causes of the ultimate failure of all the efforts at compromise and understanding between Henry and his subjects made in the period before 1258.

Henry backed up his extensive use of the professional administrator by the offensive reliance on the foreign friends and relatives referred to above. Some of these appointments had much to commend them; some grew out of Henry's interests abroad; but their cumulative effect was nevertheless clearly derogatory to the relations between the nation and the Crown. William, Bishop Elect of Valence, uncle of Henry's wife Eleanor, was, from 1236, the chief figure, or one of the chief figures, in Henry's council. Simon de Montfort came to England as a king's favourite, and was secretly married to the king's sister in 1238. Peter of Savoy in 1240 obtained the Earl-dom of Richmond as a gift from the king. Boniface, Peter's brother, succeeded Edmund Rich as Archbishop of Canterbury in 1245, the only foreign prelate to hold this position in the thirteenth century, and said to be the

<sup>7</sup> See my *Chancery under Edward III* (Manchester, 1929), Appendix II.

<sup>8</sup> Matt. Paris, *Chron. Maj.*, III, 629; V, 91.

most hated man in England.<sup>9</sup> Aylmer de Valence, the king's half-brother, obtained the rich see of Winchester in 1250.<sup>10</sup> One of the foremost motives of the final opposition of the barons in 1258, and one of the most pressing demands of the Provisions of Oxford, was the ending of the influence of foreigners in the politics of England and the councils of the English king.

Above and beyond all this, Henry both mismanaged the national resources and failed to take the nation into his confidence either in small or in the great councils. It is true that the marriage of Henry's sister to the Emperor Frederick was discussed in a great council, in 1235, and that Henry asked for supplies in great councils in 1237, 1242, 1244, 1248, at Easter 1253, and on other occasions. In 1237, in the words of Matthew Paris, he gave himself to the counsel of the faithful men of his own realm, and admitted three barons to his council. But Simon was married to the king's sister Eleanor in secret, and Henry consistently refused to allow the magnates to have any influence on the way he spent his money or conducted the foreign policy that drained his resources and landed him in humiliations and defeats. As the barons complained in 1237, "all these things he had done without the counsel of his faithful subjects; nor ought they to share the penalty who had not shared in the crime."<sup>11</sup> Henry claimed in 1244 that he had gone on his Gascon expedition of 1242 by the advice of his barons; but the truth was that his magnates had urged him to await the expiration of the existing truce with France. The final negotiations regarding the kingdom of Sicily were taken against the known wishes of the magnates. The latter were never taken fully into Henry's con-

<sup>9</sup> It does not follow that all such clerics were simply creatures of the king; see M. Gibbs and J. Lang, *Bishops and Reform, 1215-1272* (Oxford, 1934).

<sup>10</sup> Elected then, but not consecrated by the Pope; see Ch. Bémont, *Simon de Montfort*, trans. by E. F. Jacob (Oxford, 1930), 49. For other details see E. F. Jacob, *C.M.H.*, VI, 266.

<sup>11</sup> Matt. Paris, *Chron. Maj.*, III, 381.

fidence until the whole nation was hopelessly compromised and its resources pledged. When Henry, in 1257, claimed that he had accepted the throne of Sicily for Edmund, with the consent of the English church,<sup>12</sup> the clergy declared, though apparently untruthfully, that they had not even heard of the project until it was completed.<sup>13</sup> The "community of earls, nobles and others of the realm of England" complained in a letter to Alexander IV in 1258 that Henry had undertaken the business of Sicily without consulting them, without their consent, and, indeed, in spite of their opposition.<sup>14</sup> The country was paying dearly for Henry's stubborn adherence to his monarchical interpretation of the constitution: a crisis was building up that would not, in the long run, be solved short of civil war.

Yet Henry, as already pointed out, had weighty arguments in his favour. One of them was strongly expressed in the parliament of 1248,<sup>15</sup> when the king asserted, with truth, that each one of the magnates claimed a freedom which all denied to him, of choosing his own council, and that "least of all ought servants to judge their masters and vassals their prince." He would not be their king but their servant if he bent to their will. The oldest political traditions, seemed, on the whole, favourable to Henry's thesis, though this was partly the result of distortion, for the deepest of them all, as we have seen, postulated a rule based on counsel and consent. The dictum *reges a regendo vocati* was as old as St. Isidore of Seville. Both Gregory IX and Henry could argue that a plenitude of royal authority was necessary for peace and

<sup>12</sup> *Ibid.*, V, 623. Even Henry did not venture to claim that he had acted in this matter with the advice of his magnates.

<sup>13</sup> C.H., II, 72-3. *Annals of Burton*, in *Annales Monastici*, I, 391. But cf. Powicke, *King Henry III*, 375, n. 1. The sort of council Henry relied on is illustrated by Bémont, *Simon de Montfort*, 130-131.

<sup>14</sup> Matt. Paris, *Chron. Maj.*, VI, 400; Bémont, *Simon de Montfort*, 162-5.

<sup>15</sup> Printed below, and in M. A. Hennings, *England under Henry III* (London, 1924), 65-8.

security; that to give in to the claims of the barons was to invite anarchy in the state. Yet all this was an evasion of the practical problems of the thirteenth century. There could be no lasting peace in England until the great principle of common action in matters affecting the king and the nation had been fairly accepted by the monarch as a basis for the royal rule.

The magnates, for their part, had not yet translated their feeling of the needs of the situation into clear-cut political terms. This was not so much due to incapacity as to the novelty and difficulty of the problem. A clear example of the hesitations and distress this might cause, in a well-meaning and not unprincipled magnate, is seen in the tergiversations of Richard of Cornwall, brother of the king. Whether or not he was bribed by Henry to desert the barons,<sup>16</sup> the fact remains that the rights and wrongs of the conflict were so evenly balanced, in the period 1234-58, as in the period 1258-65, that men of goodwill and honest intentions could easily change sides without any sense of shame or betrayal, and without justifying the aspersions which Simon de Montfort later cast on the character of English magnates as a whole.

In 1234, as we have seen, all the magnates could think of demanding was the dismissal of the king's bad advisers from his council. In 1236 a conflagration was started by the rumour that Henry had a council of twelve sworn members under William of Valence, that he had sworn to do nothing without their advice, and that he was attempting to substitute the French court of twelve peers for the common council of the realm. The barons showed their sensitiveness to the problem of government by driving Henry to take refuge in the Tower of London; but, though they demanded why William did not dispose of the "negotia regni Francorum" at the court of his niece, the Queen of France, and not in England, we know of no specific demands they made, unless it be the

<sup>16</sup> Stubbs, in *C. H.*, II, 61-2 has judicious words to say on this subject.

removal of the sheriffs.<sup>17</sup> In 1237, though Henry was led by his necessities, to offer them a share in the spending of the aid he had requested, the magnates were apparently not yet prepared to attempt any far-reaching restraints on the ruler. All they wanted, if we may argue from Henry's concessions, was the confirmation of Magna Carta, the king's general promise to rule with their advice, and the addition of the Earl of Warenne, William of Ferrars, and John Fitz-Geoffrey, to the royal council.<sup>18</sup> These were fairly sweeping demands; they were a step forward beyond the largely negative position of 1234; but they show that the magnates, strong though they were in their rejection of the postulates of Henry's policy towards them, had not yet been driven into producing a detailed plan of reform.

In 1238 the barons, this time led by Richard of Cornwall, again complained bitterly that Henry disposed of the *negotia regni* with the counsel only of foreigners, whom he had promised to move from his side;<sup>19</sup> but though Henry promised to observe provisions made by the weightier personalities amongst the barons, and though the magnates got as far as producing an ordinance of reform, sealed by the Legate if not by the king, nothing has survived. The leaders of the nation had now progressed as far as the idea of a definite and presumably comprehensive scheme of reform; but the details must have been extraordinarily difficult to work out, and it is not surprising that the movement failed to keep the support of Earl Richard, and, for the time, came to nought. The magnates did not make any demands for reform even when they were given an opportunity by the king in 1242.<sup>20</sup>

<sup>17</sup> Matt. Paris, *Chron. Maj.*, III, 362 and 363. This query shows how clearly the barons recognized the manner in which Henry was disposing of the *negotia regni* with the advice only of his inner council, and how prominent in their minds was the constitutional problem thus created.

<sup>18</sup> *Ibid.*, 382 and 383.

<sup>19</sup> *Ibid.*, III, 476.

<sup>20</sup> *Ibid.*, IV, 187.

Probably in 1244, however, they produced the first definite plan of reform of the reign of Henry III. This plan is discussed at length below. In this "Paper Constitution" they again showed conclusively that the problem of the constitution was the problem of the *negotia regis et regni* and the share of the nation in the ordering of this business in the councils of the king and of the realm. The solutions propounded were not unstatesmanlike. The magnates recognized the necessity of dealing with some *negotia regis et regni* in the "Privy" Council; but they gave extensive powers, inside and outside this council, to four "conservers of liberty" elected by themselves. They did not surrender their claims that important business of state should come before the great council; indeed, they made sure that this should happen, by decreeing that the great council should be summoned, when necessary, at the discretion of the conservers of the peace. These proposals were not, however, practicable in 1244. They do credit to the political acumen of the opposition to Henry, but they could not prevail against the reality of the royal power. The "Paper Constitution" of 1244 was the high watermark of the early constructive opposition to Henry's scheme of government. Its failure left the magnates temporarily with no hope of a final solution to the problem presented by their pious and likable, but stubborn and autocratic ruler. The waters of progress were dammed up until they broke, with too great weight and fury, in the radical movement of 1258.

The baronial demands of 1248, 1249, and 1255, that the king should elect the Chancellor, Treasurer, and Justiciar by "common counsel of the realm"<sup>21</sup> did not touch more than the fringe of the problem. In these, the magnates may not have been thinking at all of any principle of ministerial responsibility to the nation. They were perhaps merely trying to secure an influence in the increasingly important sphere of administration and,

<sup>21</sup> See my *Chancery under Edward III*, 196.

above all, in the inner council of the king. But Henry did not think it necessary to grant even these modest demands. His reconfirmation of the Charters in 1253 was of no permanent importance, at least in regard to the central problem of government,<sup>22</sup> even though he swore: "So help me God, all these will I faithfully keep inviolate as I am a man, a Christian, a knight, a crowned and anointed king."<sup>23</sup> Until 1258 the régime was sustained, not only by the power of the monarch and the support of the Pope, but also because the opposition, lacking the necessary political experience, and confronted by new and baffling problems, could not devise any formula for co-operation in the great affairs of state that would not split the ranks of its own supporters wide open, as possibly happened in 1244.

In 1258 the magnates revived and expanded their earlier claims, mainly because, in that year, Henry's government was completely bankrupt and the magnates were almost compelled to suggest a major reorganization. They were also encouraged, however, by the great developments which had taken place, even since 1244, in parliament and in council. These institutions were now quite clearly beginning to evolve into something very different from the unformed and fluctuating groups of advisers of the late Angevin period. Their structure and functions had become clarified by custom and precedent and by long years of discussion and debate. They could be more easily brought within the orbit of political action and constitutional definition, and they affected an ever widening circle of the people. In 1258-65 the magnates did, in fact, achieve their greatest and most permanent success in relation to the institution of parliament, which was to figure very little in their actual provisions of reform. The broadening of the conception of this body,

<sup>22</sup> It may have had great importance, not yet fully worked out, for matters of taxation and—particularly—of military service.

<sup>23</sup> C.H., II, 68. And similarly in 1257; Matt. Paris, *Chron. Maj.*, V, 377, 623.

in both function and personnel, that came out of their experiment was, in the long run, even more important than their specific plans for judicial or administrative reform, or for limiting and supervising the actions of Henry III.

#### IV

THE core and centre of the reforming movement of 1258-65 were the Provisions of Oxford. They were drawn up by a committee of twenty-four magnates, half elected by the monarch and half by the barons, and presented to Henry in June, 1258. The so-called Provisions of Westminster of October, 1259 were merely the second, and as many may have understood, the final instalment of the reforming Provisions, though not by any means the end of the reforms. The Provisions were the outcome of many years of discussion and of opposition. They were clearly the result of complete despair, on the part of the magnates, of a conservative solution to the problem of government. The only policy which seemed to offer a hope of salvation for the country was a revival, modification, and extension of the Paper Constitution of 1244. The tremendous scope and effectiveness of this reforming policy has, until recent years,<sup>1</sup> tended to be obscured by the developing struggle for power which grew out of it. But the policy itself was really more important, for the purposes of history, than the struggle. It is of supreme importance. The Provisions of Oxford were the only comprehensive plan of reform imposed on the monarch in England between Magna Carta and the Ordinances of 1311; and they have much light to throw on the political evolution during that great century of change.

One of the striking features of the Provisions of Oxford

<sup>1</sup> For the latest works on this subject see Powicke, *King Henry III*, Bémont, *Simon de Montfort*, R. F. Treharne, *The Baronial Plan of Reform, 1258-63* (Manchester, 1932), and other works cited in chap. iii, below.

and of the supplementary Provisions of Westminster, is the importance attached not only to individual abuses, as in Magna Carta, but to overhauling the whole system of administration, central and local. And, from the Petition of the Barons at the start of the reforming movement,<sup>2</sup> down to the Provisions of Westminster, close attention was paid to the grievances of the lesser gentry as well as to those of the magnates. Thus the reforms reflect both the extent to which the problem of government had become centred in the bureaucracy, and the extent to which it was beginning to affect the middle classes of the nation. The latter fact was to be strikingly manifested in October, 1259 by the political action of the "Community of the Bachelors of England" composed of smaller landowners. It was shown, on a larger scale, by Simon de Montfort's trust in, and support from, the knights of the shire and burgesses in 1264 and 1265. Questions and debates arising out of the new activities and needs of these last two bodies—out of their self-government at the king's command,<sup>3</sup> and their potential military service and taxation—were rapidly transforming their position in the state and in relation to the common council of the land.

But the most striking features of the Provisions of Oxford themselves were those relating to parliament and council. Like the plan of 1244, the Provisions placed the council at the centre of the government and of the suggested reforms; and, like the earlier plan, they preserved and enhanced the position of parliament as the permanent focus of government, where the great affairs of state were to be disposed of by the king and by the nation. It is true that the barons were apparently completely aristocratic in their conception of the assembly, though

<sup>2</sup> Trehearne, *Baronial Plan of Reform*, 70; S.C., 373-8.

<sup>3</sup> This well-known phrase has been happily established by A. B. White, *Self-Government at the King's Command*.

nothing whatever was said in the Provisions to exclude the summoning of knights and burgesses; and it is true that the number of magnates whose attendance was obligatory, outside those who were members of the council, was reduced to twelve. But the fundamental principle of parliamentary discussion of all important *negotia regis et regni* seems to have been asserted. There was ample provision made in the regulations at Oxford with regard to both council and parliament, to secure that in future the king and magnates should discuss together the important affairs of state. In this respect the new regulations were the direct heir to the Paper Constitution of 1244. And, unlike the Paper Constitution, they were, for a time at least, actually applied. The Provisions of Oxford did, in fact, virtually close the long struggle over this principle of discussion which had been waged ever since the accession of Henry III. As is often the case in medieval records, the importance of this clause relating to parliament in the Provisions of Oxford cannot be measured by the number of its words. The brief statement of 1258, reproduced in the translation below, is one of the great landmarks in the history of the greatest institution medieval England produced.<sup>4</sup>

<sup>4</sup> It must be confessed that such an historian as Maitland thought that nothing of importance in the history of parliament happened during the years of the Provisions of Oxford (F. W. Maitland, *The Constitutional History of England* (Cambridge, 1926), 72). Stubbs (*C.H.*, II, 80) believed that the Provisions were "intended rather to fetter the king than to extend or develop the action of the community at large." Mr. Jolliffe does, indeed, believe that the Provisions of Oxford marked the end of a prolonged and gradual evolution in public life which now receives statutory recognition (*The Constitutional History of Medieval England* (London, 1937), 298). He thinks that the true function of parliament was to watch conciliar government from a distance, informing the permanent council as to the state of the community, and treating with it *des communs besoignes del reaume et del rei* (*Ibid.*, 297). He does not, however, seem to attach any particular importance to this last phrase. Parliament in the Provisions seems to Professor Trehearne little more than a means whereby the council was to keep in touch with the baronage (*Baronial Plan of Reform*, 86). Bémont has no comments to make in *Simon de Montfort*, 157, nor has Professor Powicke in his *King Henry III*, I, 379. I hope to discuss the whole problem at greater length in a later volume.

The baronial contribution of 1258 to the evolution of parliament was destined to endure, supplemented by the work of Simon in the period 1258-65, because it was in line with tradition and the needs of the state. The baronial attempt to utilize the council of fifteen to place Henry under tutelage was destined to failure because it did not fulfil these conditions. Whatever the exact meaning of the clauses in the Provisions of Oxford which related to the council, debated at some length in the introduction to this document below, there is no doubt whatever that Simon de Montfort and his supporters interpreted the clauses to authorize the transfer of the supreme authority in the state from the hands of the ruler into those of a baronial council of fifteen. And throughout all the vicissitudes of the period which followed the Provisions, until 1265, the main division in the country remained constant and clear. It was between those who supported and those who opposed the Provisions of Oxford as a great revolutionary measure which transferred the reality of power from the ruler to the barons.

In the end there could only be one final answer to this question. In the last analysis, fear of the Provisions as a vehicle for revolution, was even stronger than admiration for them as an instrument of reform. In the end men would prefer orderly government under the law, even though lacking somewhat in efficiency, to arbitrary, though well-meaning government, resting ultimately on force. This was the ultimate justification of the royalist and Papal policy from 1216 to 1258. It would in the end command for Henry, in spite of all his faults, the support of the greater part of the nation.

The reforming party under Simon de Montfort did much good for the English people. Their experiment of government between 1258 and 1264 helped to develop the political consciousness of both the greater and the

lesser landowning classes and of the burgesses. Their claims and ideals helped to crystallize great political and constitutional issues and reaffirm old traditions in the mind of the community at large. In many things, they represented the England of the future. Many of Simon's supporters were in London and the south-east, the most progressive part of England; many of his opponents were in the Welsh Marches or in Northumbria, united at Evesham in support of the monarchy as they united in later generations against it. Many of Simon's party felt, as has been finely described by a recent writer, the inspiration of a holy war. In spite of all this, they did not possess alone, as is sometimes asserted, the key to the constitutional problem. Their opponents, too, breathed the air of English tradition and made their contribution, like King Charles' Royalists, to the common stock. On the whole, the movement and methods of the reformers of 1259, if not of 1258, were bound to remain in English memory rather as a warning, and something to be avoided, than as a model of reforming action, indicating the true lines of political advance.

The movement of opposition to Henry III ultimately failed, at Evesham, in 1265, because the magnates could devise no satisfactory method of maintaining a permanent, or an indefinitely prolonged, control over the ruler, even in the interests of a salutary and widely supported plan of reform. The medieval tradition of government was indissolubly connected with the personal authority of the monarch. To destroy this authority, by however ingenious a scheme, was to destroy the basis of the state; it was to destroy the age-long source of security and law. To justify Simon de Montfort entirely, in his method of opposition to Henry III, simply on the grounds of his lofty ideals, misses the point. Simon was caught on the horns of a cruel dilemma, not the last in English history, in which he had either to see his ideals rendered in-

effective by royal opposition, or he had to attempt to achieve them by unconstitutional and unjustifiable means. He and Oliver Cromwell might find a grim satisfaction in comparing their difficulties and philosophies of action.<sup>5</sup> To argue simply that Simon was betrayed by the selfishness and treachery of the English baronage, plus his own hot temper, is to ignore the repercussions of an attempt to supersede the monarch by a reforming council, on a baronage bred in unbroken traditions of monarchical rule. Simon showed, after the Battle of Lewes, that he had learned wisdom and caution. His Mise or scheme of arbitration after the Battle of Lewes, though it followed a repetition, on his part, of allegiance to the ideals of the Provisions of Oxford, gave more moderate attributes to the new council that was to advise the king.

But Simon was far too much committed to revolutionary projects for his schemes of reconstruction, after Lewes, to be regarded without suspicion, either in England or in France. He would not, apparently, disown the Provisions of Oxford; and Louis IX had already expressed good, honest, conservative opinion on what these represented, in the Mise of Amiens, in January 1264. Simon's most explicit scheme of reconstruction, his *Forma Regiminis* of 1264 and 1265, was admittedly at first only a temporary expedient. It could provide no basis for a settlement of England. His fall at Evesham was as inevitable and sudden as his rise. With him there perished also, for at least two generations, the reforming radicalism which had been built up by the far-reaching claims and indifferent government of Henry III. Simon's failure, despite his high ideals, courage, and devotion to the common good, proved the impossibility of storming the

<sup>5</sup> It is interesting to notice that the characters of both these men have been illuminated, but possibly also somewhat distorted, at the hands of modern historians, by the same kind of mystic approach.

king's position by a frontal assault. The functions of the monarch were interwoven with the fabric of the nation's life and history. They were beneficial. They were to be largely superseded only after long centuries of evolution and political change. But by his life and his death, Simon de Montfort made a great contribution towards the work of transforming them so as to fit beneficially into the framework of government of the modern English state.

The Dictum of Kenilworth of 1266 and the Statute of Marlborough of 1267 preserved much of the Provisions of Oxford. But they swept away the taint of revolution and reasserted the royal power. "We declare" said the former, in the only constitutional definition of the royalist restoration which is on record, "that . . . Henry . . . shall have . . . his dominion, authority and royal power without impediment or contradiction of any one, whereby, contrary to the approved rights and laws and the long established customs of the kingdom, the royal dignity shall be offended."<sup>6</sup> The Statute of Marlborough,<sup>7</sup> though it remedied many grievances of the country, and provided still again, for the keeping of the Charters, made no reference to the prerogatives of the king. But Henry, in the Dictum, promised to keep those concessions he had freely made in the past, including Magna Carta and the Forest Charters.<sup>8</sup> The Dictum was made on behalf of the king, the barons, the counsellors of the realm, and the magnates of England; the Statute was made with the counsel of the more discreet of the realm, greater and smaller. The settlement certainly expressed the outward forms of government by consent, even in these royalist enactments; whether it was also infused with the spirit, depended on what Henry under-

<sup>6</sup> *Statutes of the Realm*, I, 12.

<sup>7</sup> *Ibid.*, I, 19.

<sup>8</sup> *Ibid.*, I, 13.

stood by the rights, laws, and long-established customs of the kingdom which, by implication, he undertook to maintain. Both the nature of the government from 1266 to 1272 and the spirit of Prince Edward when he became monarch, suggest that it was. Indeed, by 1267, England was in such confusion, and the opposition still so formidable at Kenilworth and Ely, that Henry could hardly have hoped, even if he had not been sobered by experience, to ignore the more reasonable claims of the earlier baronial opposition. Even at Ely the rebels demanded<sup>9</sup> that foreigners be removed from the royal council and that the Provisions of Oxford be kept. This, both Henry and the Papal Legate found, with reason, to be "exasperating." They rejected such a demand outright; but it represented a feeling still strong in the nation. The king could not dispose of it by simple reaction. It seems likely that England, deeply scarred by civil war, and weary of political ambitions and intrigue, in the end rejected the extremists of both sides. After 1265 the long and momentous struggle for the principle of co-operative government through the great council or parliament may be regarded as settled.<sup>10</sup> It remained for Edward I to work out the far-reaching practical application of this principle, underlying many of the important aspects of government, in the famous parliamentary assemblies of his reign.

## V

IT IS not by accident that the reign of Edward I, following the great struggles and decisions of his father, was a period of extensive reconstruction. The energies of the nation, long frustrated by discord and strife, but still strong and creative, could now be united and directed

<sup>9</sup> W. Rishanger, *Chronica*, ed. by H. T. Riley, (R.S., 1865), 55.

<sup>10</sup> Professor Powicke has illustrated at length its application to taxation in the case of the twentieth of the value of personal property, levied in the great Hocktide parliament of April, 1270; *King Henry III*, 566 and 567.

forward to effect a long and memorable advance in the evolution of the medieval state. The central problem of sovereignty which had defied solution for fifty years was now at least in abeyance. With the principle of co-operation in the national council assured, it was possible to attack the problem of the details of this co-operation in law, administration, and finance. All the legal and administrative development of the thirteenth century, which had done so much to complicate the problem of the monarchy under Henry, could now be utilized to work out the framework of the modern national state. The New Monarchy of Edward I in England was not unique; but it was excelled in no other country. It was possible because, for a time, and to some extent irrespective of the personality of the ruler, Englishmen were in profound agreement on essentials; and at the core of their agreement lay the ancient, unchanging, and unbreakable tradition of the co-operative state.

Nevertheless, the personality of the new ruler was important. What helped to make the period after 1272 one of the most memorable in English history was the fact that at length, after nearly a century of disappointment, the English had found a ruler who came very near to their ideal of a king.<sup>1</sup> Edward I was brave, sociable, active, intelligent, and conscientious. If he was also headstrong and over-subtle, these were failings common enough in his age and hardly counted as faults. His own generation does not seem to have had any serious doubts about him or about his intentions. It has been left for modern historians to question the sincerity of his assertions, the honesty of his treatment of his magnates, and the integrity of his attitude towards the traditions of the state.

To Stubbs, Edward I was the great architect of the

<sup>1</sup> Since this was written, Edward's character has been discussed, sympathetically and expertly, by F. M. Powicke, *King Henry III*, 686-735.

constitutional, parliamentary monarchy of a later England, undermining seigniorial jurisdiction, eliminating the doctrine of tenure from political life, cunningly depressing the magnates by the long-term consequences of his great legislation, and only grudgingly creating the model parliament to be the centre of the political scene.<sup>2</sup> To Petit-Dutaillis and M. Lefebvre, his policy was strongly anti-feudal.<sup>3</sup> Tout suggested that if Edward had been given ten more years of life he would have been as dangerous to constitutional freedom as any medieval French king.<sup>4</sup> To Mr. Jolliffe, he was the great practical genius, who was prepared to take parties and institutions as they stood and to reconcile them in a workable order of government.<sup>5</sup> He was also, however, a ruler who had the courage or the indifference to break with the feudal past—the reign of Henry III having seen the collapse of feudalism as the basis of the practice and theory of political life<sup>6</sup>—and to found what, at least as a system, was a new régime, upon the basis of prerogative exercised in parliament. All, or nearly all these writers seem to agree that Edward was deliberately hostile to the feudal traditions of the past. There has recently been a strong tendency to question whether he was deliberately hostile but there has been no large-scale redressing of the balance, and a full discussion of Edward's character and motives is much to be desired.<sup>7</sup>

<sup>2</sup> *C.H.*, II, 110.

<sup>3</sup> Ch. Petit-Dutaillis and Georges Lefebvre, *Studies and Notes Supplementary to Stubbs' Constitutional History*, III, trans. by M. I. E. Robertson and R. F. Treharne (Manchester, 1929), 479-81.

<sup>4</sup> *Place of Edward II in English History*, ed. by H. Johnstone (2 ed.; Manchester, 1936), 30.

<sup>5</sup> *Const. Hist. of England*, 334.

<sup>6</sup> *Ibid.*, 331.

<sup>7</sup> An outstanding contribution has now been offered by F. M. Powicke, *King Henry III*, 703-35. A notably balanced appreciation was given by Professor Hilda Johnstone in *C.M.H.*, VII, 393-412. See also H.M. Cam, "The Decline and Fall of English Feudalism" in *History*, XXV, Dec., 1940, 216-33; and V. H. Galbraith, "Good Kings and Bad Kings in Medieval English History," *ibid.*, XXX, Sept., 1945, 119-32.

In this long reign there is plenty of conflicting material to support any of these views. Whether or not feudalism had collapsed in the reign of Henry III is a particularly debatable point. After William I "established" feudalism in England it was always collapsing, in one or another of its features, but it still survived in some form until the reign of Elizabeth. If Edward was anti-feudal, it may have been through the needs of the moment, not through deliberation and conviction. If he sought for power it was for the sake of national security and efficiency, as well as for himself. It is doubtful if he ever directly questioned the feudal concept of a limited monarch, subject to the law and ruling by counsel and consent, or dreamed of denying to his magnates the essentials of their ancient and unchallengeable position in the state. Indeed, it could be said, with a great deal of reason, that Henry III had been far more anti-feudal than was Edward I.

Perhaps Edward, like his father, is best understood in the light of his own early experiences and of the problems which confronted him during his reign. He was the heir to the restoration of 1266, and he was committed by history, and perhaps by his own temperament, to the New Monarchy, the early beginnings of which had helped to inspire the political aims and methods of his father. The age of Edward I was the age of Philip the Fair of France and Alfonso the Wise of Castile. It was the age of the early national monarchy. It witnessed the first tentative but unmistakable formulation of the theory and practice of the modern state.<sup>8</sup> Thus Edward's energies, at home, were inevitably directed to a great task of constructive definition; they were just as inevitably directed outwards by the expanding power of the English nation, and by the expanding forces of nationalism pressing on England from without. The exigencies of the

<sup>8</sup> For a scholarly little survey of this period, see E. P. Cheyney, *The Dawn of a New Era* (4 ed.; New York, 1936).

situation as well as the instinct of his generation made him passionate for order and efficiency; they made him at once impatient of the slow processes of medieval political action and more dependent than most rulers on the co-operation and goodwill of the nation. He was at once the greatest constitutionalist and the greatest, though unavowed and probably unconscious, enemy of the old order, since Henry II.

For the most part, he earned, by his reforms and his victories, the respect and even the love of his people. He warred and he relaxed in the company of his magnates; and it is difficult to imagine him, any more than his grandson Edward III, as deliberately attacking the order which was so congenial to him, in which he was so successful at home and abroad. It is true that by his *De Donis Conditionalibus*, part of Westminster II, he facilitated the creation of entailed estates, by providing that in these the rights of the heir should not be barred on account of the alienation of the estate by its previous tenant; and so, in the long run, through the growth and comparative inviolability of entailed estates, escheating to the king on the failure of heirs, he undoubtedly served the interests of the Crown; but still the enactment was a direct boon to the great landed families of England, and helped to make them stable and enduring, repositories of experience and tradition as well as of arrogance and power. The enactment may, it has even been suggested, have been the result of strong pressure from the magnates, constituting the feudal response to the Statute of Acton Burnell. It has been called "a monument of colossal family pride and feudal arrogance."<sup>9</sup> It is very hard to see in it anything but the solicitude of a feudal monarch for his greater lords.

It is true also that by *Quia Emptores* Edward prevented further sub-infeudation by declaring that if any

<sup>9</sup> E. Jenks, *Edward Plantagenet* (London, 1902), 207-11.

vassal alienated part of his land, the service owed from this would have to be rendered not to the grantor, but to the lord from whom the grantor held and to whom he owed service. He was aiming a blow, it has been thought, at the feudal structure, showing his dislike of feudal traditions, and in the long run, as in the case of *De Donis*, strengthening the position of the Crown. But this enactment, too, was the reply to a petition from the magnates, though it has been suggested<sup>10</sup> that the statute went far beyond what the petitioners requested, and that the barons were incensed when they saw how it worked. This last conclusion is, however, debatable; and it has yet to be proved that an enactment so obviously advantageous to the great magnates was inspired by any hostility to their interests or position in the country, or by a desire, at their expense, to achieve the profit of the Crown. The truth is that, as has been already suggested, the interests of the king and the magnates, in matters of this kind, were largely the same. The king, like his magnates, was a landowner. In this, as in many other things, he was really *primus inter pares*. His large and comprehensive problem of government was unique; but many other problems, sometimes erroneously associated with the monarchy alone, were already duplicated (indeed had always been duplicated) on the baronial estates. The problem of sub-infeudation, for example, was shared almost equally by the barons and the king.

The great inquest of 1274 and the *Quo Warranto* proceedings, begun in 1278, are a different matter.<sup>11</sup> There was certainly some opposition to them; though on the other hand it is now generally agreed that Edward was

<sup>10</sup> *Ibid.*, 275-6. Mr. Jenks's conclusions are open to debate, and the problem will be more fully discussed elsewhere. See the recent summary of this statute and Edward's legislation in general, given by T. F. T. Plucknett in *A Concise History of the Common Law* (2 ed.; New York, 1936), 30-31 and 483.

<sup>11</sup> They are discussed in more detail in a later volume.

far from launching a general attack on private jurisdictions. *Quo Warranto* proceedings were no novelty in England; they had been familiar in the reign of Henry III. Few franchises were abolished as a result of Edward's inquiries. He seems to have asked, as often, for no more than the just rights of the Crown as he conceived them, with one eye, again as was his habit, on the possibility of financial gain. The anti-feudal nature and intention of Edward's enactments with regard to landowning seem to have little foundation save in the ambitious and masterful character of Edward, and the fact that his legislation reacted in the future, but only in the distant future, in favour of the supreme magnate of all and the summit of the feudal hierarchy, the Crown. It seems probable that his main purpose was simply "to respect all rights and overthrow all usurpations."<sup>12</sup> Royal profits were incidental. That does not mean that they were either unimportant or unappreciated by the king.

Edward's other legislation, and other legal developments, similarly benefited the ruler; but they were not therefore aimed at the feudal order and were not opposed by the magnates. Some were clearly seen to be of advantage to all. Statutes like those of Westminster I and Westminster II were great remedial enactments covering the whole field of legal administration. Larger and more comprehensive than Magna Carta or the Provisions of Westminster or the Statute of Marlborough, they were granted freely by the ruler, were not associated with civil war or opposition, and were established by counsel and consent. "Its language," Bishop Stubbs said<sup>13</sup> of the first Statute of Westminster, "now recalls that of Canute or Alfred, now anticipates that of our own day: on the one hand common right is to be

<sup>12</sup> C.M.H., VII, 394.

<sup>13</sup> C.H., II, 113.

done to all, . . . on the other, elections are to be free, and no man is by force, malice, or menace, to disturb them. The spirit of the Great Charter is not less discernible: excessive amercements, abuses of wardship, irregular demands for feudal aids, are forbidden in the same words or by amending enactments." Nor was the Statute of Westminster II of 1285, by which Edward "stirred up the ancient laws which had slumbered through the disturbance of the realm,"<sup>14</sup> any less important.

The form and intention of these statutes have often been described. The sum total of their effects was to go far in the transformation of the law of England from a basis of custom to a basis of statute. Statute helped to unify England under the Crown; it carried forward another stage the great work of Henry II. Statutes, and the expanding courts which operated them, enhanced the power and prestige of the national monarch, but they did not in the least change his inner nature. They caused the contribution of the folk to the law, through its ancient custom, to recede into the background. They were drawn up and issued by the king and council. They emphasized the executive power of the monarch, and they helped to bring the question of the royal prerogative to the forefront of politics in the generation after Edward I.

But statutes, though they came from the monarch, required the assent of the people. There is much ambiguity concerning the enactment of statutes in the thirteenth century, which is discussed at length in another volume; but there was at least a consistent tradition, from Grosseteste to the Statute of Lincoln, that a statute ought to be a co-operative act between the monarch and the people. Despite many apparent exceptions, well-known and often quoted, the great statutory legislation

<sup>14</sup> *Annals of Osney*, in *Annales Monastici*, ed. by H. R. Luard (R.S., 1869), IV, 304. Cf. the words of Mr. Jenks (*Edward Plantagenet*, 212), "The Statute shews every disposition to protect the feudal landowners in the exercise of their admitted rights. . . ."

of Edward I's reign was by the king and the nation; it shows us the nation co-operating in the creation of the legal framework of the national state. And once enacted, statutes were, in some sense, the property of the nation. As Bracton had already said, in a passage quoted elsewhere, written before the great legislation of Edward, "the laws of England . . . which, since they have been approved by the consent of those who use them, and have been confirmed by the oath of kings, they cannot be changed or destroyed without the common consent of all those by whose counsel and consent they were promulgated. But they can be changed for the sake of improvement, without such consent." It is true that Bracton talks of laws, not statutes; but statutes were only written laws. Written down, they became the heritage and safeguard of the nation just as their ancient custom; and they were more effective just because they were written down. If they accentuated the royal prerogative, they were also a bulwark against royal tyranny, as they were used later by the great parliamentarians of the seventeenth century. The national monarchy of the statute books was the same, in essentials, as the feudal monarchy of Henry II.

So was the monarch of the law books. He was obtaining a closer grip on his judges. The freedom of the king's ministers to give remedy for wrong was more and more, except for those recognized as having equitable jurisdiction, confined to Common Law. Equity was regarded as something very close, and becoming closer, to the person of the king. The king's prerogative and the prerogative courts began to stand forth, from the age of Edward I, as distinctly outside the Common-Law system; even, one day, to be antithetical to that system, in the hands of Charles I. But that was not so in the age of Edward. In remedying wrongs, the king was only fulfilling the spirit of the precedents and statutes. He was the national monarch, carrying on, in equity, the age-long duty of all

preceding kings. The difference was that this part of the king's functions was becoming distinct and steadily more important as the lines of law and constitution hardened; and the king was becoming at once more, and less, accessible to his subjects. The petitioning of the king in his council in his parliament for remedy was undoubtedly one of the great formative influences behind the growth of the latter assembly; whilst the establishment of parliament as a body containing a wide-spread representation of the nation greatly extended the practice of petitions. Thus the legal prerogatives of the king, as distinct from the Common Law, were, in the age of Edward I, becoming a vital factor in the life of the nation. Edward I was rapidly, in law as in other respects, becoming a national monarch; but he was not ceasing to be also a feudal king. The idea that he was, comes partly from too sharp an antithesis between the feudal and the national order. The two were not different in spirit or even, at the earliest stages, in form. The one merged insensibly into the other. The process was a broadening and transmuting of long-familiar ideas and ideals.

This is equally true in Edward's warfare, one of the notable features of his reign. It is true that he developed the system of payments and tried to expand the traditional service, both by extending its duration and by widening its incidence in the critical period of 1294-97. In one sense he was, in respect of military service, the enemy of the ancient feudal nobility; and military service was the foundation of the whole order. He would have gone some way towards replacing the tenants by knight service, in his armies, by semi-professional soldiers serving for pay, or by the national militia, summoned by a non-feudal obligation to the ruler or for the simple defence of hearth and home. Yet he was only developing precedents of the reign of Henry III. He was responding to the needs of the moment. It is hard to think that he was

deliberately attacking the feudal lords. No king ever used more, or depended more closely upon, his magnates. For no ruler in English history, not excepting those immediately after the Norman Conquest, was the co-operation of the magnates more necessary to the welfare of the state. Any deliberately anti-feudal policy under these circumstances would have been suicidal. What Edward sought to do, in military service as in legislation, was to make the best of the abundant material which had been provided for him by the astonishing progress of the last fifty years. If this seems to us to be anti-feudal, that may be because we, armed with the knowledge of more than six centuries of evolution since Edward, are wise after the event. Edward and his magnates could not often see further than the needs, inadequacies, and possibilities of the immediate situation. It is probable that both accepted feudalism as the basis of the military system. Where they were deeply divided was on the measures by which Edward attempted to bring the system up to date.

For the practical needs of his government and his wars, Edward expanded and strengthened his administration beyond all recognition. In particular he relied on his household servants for his improvisation; and it is to his age that we owe the great development of both the Wardrobe and the Privy Seal. There was nothing sinister or autocratic in this development. There was no outcry against it. The only recorded, and not very serious, protest was in 1300, when the magnates demanded that writs under the Privy Seal should not interfere with the course of the Common Law. Edward had to use his household administration and officials because they were most elastic, most mobile, and most closely concerned with the body of household knights who were at the centre of his armies. There was no complaint about his administration in the great political crisis of 1297.

It seems probable that, far from evoking any general

opposition, the goodness of Edward's intentions was apparent to his subjects from the start. The difference between Edward and his father was that Edward was a good ruler whereas Henry had been an indifferent ruler; that Edward worked with his barons, not against them; that, until 1297, Edward, unlike his father, brought England victory and internal peace, not humiliation and the threat of civil war. He began his reign as a tried soldier and politician and a successful Crusader. In the first great, recorded parliament of his reign, that of 1275, he not only passed the Statute of Westminster I, with the consent of the prelates and magnates, and the "community of the land"—possibly, as Stubbs conjectured,<sup>15</sup> the knights of the shire; he also received the *magna et antiqua custuma*, a custom on wool, as a permanent concession, with the assent of the magnates and part, at least, of the commons.<sup>16</sup> Both he and the nation thus showed their support of the idea of a modern government based on an adequate income, good administration, and counsel and consent. The new custom did not prevent heavy exactions later by the king, or the outright refusal of the magnates, represented by Gilbert of Clare, Earl of Gloucester, to grant supplies, in Edward's absence, during the parliament of 1289.<sup>17</sup> The good deeds and good relations of these beginnings were not maintained. The governmental expansion and wars were, in the end, almost as disruptive of mutual understanding in this as in the earlier period; but the fault lay far less than previously with the monarch, and his differences with his magnates never seriously endangered the throne.

The middle years of Edward's reign saw the necessity for national efforts unprecedented in English history. The great Welsh wars began in 1277; they were a direct

<sup>15</sup> C.H., II, 113; *Statutes of the Realm*, I, 26.

<sup>16</sup> See my *Studies*, 59.

<sup>17</sup> Thomas Wykes, *Chronicon*, in *Annales Monastici*, IV, ed. by H. R. Luard, (R.S., 1869), 316.

legacy from the weakness of England in the age of Henry and Simon de Montfort and from the rising nationalism on both sides of the border. In spite of the victorious treaty of Aberconway, they continued through the revolts of 1282-83 and 1294-95, making enormous demands on the resources of the nation. They were supplemented or overshadowed by difficulties in France, which called for Edward's presence in that country from May, 1286 to August, 1289, and which culminated in the impromptu naval engagement off St. Malo in Brittany on May 15, 1293, and in the declaration of war by Edward in a parliament of June, 1294. It was Edward's resolve, in 1297, to support, in person, his ally the Count of Flanders, against Philip the Fair, which helped to bring on the greatest domestic crisis of his reign; and the French war was not ended until the Truce of Tournai, sealed on January 31, 1298. Meanwhile the death, in 1290, of the Maid of Norway, heiress to the throne of Scotland, had resulted in Edward's support of John Balliol as her successor. This soon (March, 1296) resulted in the long-drawn-out, expensive Scottish war, with its great victory at Falkirk, its barren ravaging of the Lowlands, its costly border warfare, and the defeat of Stirling Bridge.

These wars were certainly not all of Edward's asking. He tried hard for reasonable terms with Philip the Fair. A good case can be made out for the correctness and soundness of his Scottish policy. But there is no denying that Edward was proud and ambitious, and as resolute, in some ways, as Henry, to assert the full royal control over the government and particularly over the conduct of foreign affairs. On the other hand, his subjects were not conversant with all the difficulties and complexities of external relations, and were apt to be very insular in their outlook and demands. They acknowledged little more direct responsibility for English interests abroad than their predecessors under Henry. The question of

what constituted the *negotia regis* and what was the *negotia regis et regni*, still complicated the problem of government; and it was hard to find a satisfactory solution within the framework of the ideas current in the age. Edward still withheld too much from his subjects. They, for their part, tended to question the need for the recurrent demands of their ruler, good though they acknowledged his intentions; demands which destroyed the results of his earlier reforming activities and thwarted his observance of the principles of government he constantly proclaimed.

Edward's difficulties with the church were perhaps no more due to a lack of good intention than were his difficulties with the barons and knights. He might quarrel with Peckham and Winchelsea, lay hands on clerical property, defy the Papal injunctions and lay the Dean of St. Paul's dead at his feet with his anger at being thwarted; but in all his dealings with the clergy, and in all his waywardness, he had a regard for principles of conduct and the welfare of the state. He acted more as a national ruler than a Christian subject. He used, or invented, a clause in his coronation oath in order to defend both himself and his subjects against clerical pretensions. But in all this he only acted as a child of his generation. Perhaps no ruler of an embryo national state like that of England in the late thirteenth century would have been able to avoid conflict with the universal Papacy of Boniface—certainly no ruler as masterful and mindful of the secular interests of his subjects as Edward I.

The first aggression came, indeed, from Archbishop Peckham, in the Council of Reading of 1279. Edward, however, made his own contribution to the inevitable friction. The statute *De Religiosis* of the same year forbade the acquisition of land by the church or others, in such a way that the land should come into mortmain. The new taxation of the clergy in 1279 and 1280, culmi-

nated in the demand for half their entire revenue, in 1294.<sup>18</sup> These acts, together with the events leading up to the writ of *Circumspecte agatis* in 1286,<sup>19</sup> a writ which served to define the action of ecclesiastical courts, were all products of the expanding national state. They were also the prelude to the great conflict between Edward I and Archbishop Winchelsea which was brought on by the bull *Clericis laicos* of Boniface VIII. The New Monarchy of Edward I inevitably came into conflict with both the loyalties and postulates of the clergy in England and the plenitude of power of the Pope, head of the Universal Church.

The old alliance with the Papacy, which had been so fundamental in the policy of Henry III, gradually broke down before the needs and outlook of his crusading son. The clergy became too much absorbed in the secular and political life of the nation to continue, on the same level, the traditions of Stephen Langton and Edmund Rich as the guardians of the nation's moral consciousness and deep political ideals. The monarch became too English and national to depend, as Henry had depended, on the Pope. The monarchy was, in the long run, to be stronger and more secure for the weakening of the Papal alliance, though Edward himself was to feel the lack of the alliance keenly in the crises of his later years, and he actually restored something of the old relationships under Clement V. The clergy were to find a new place in the state, culminating in the new state-clergy of the Reformation. But these transitions were bound to be attended by recurrent friction. It was unfortunate for Edward that he bore the brunt of the first decisive changes. The greatest crisis which these engendered coincided with the one

<sup>18</sup> Lunt, *Financial Relations of the Papacy*, 356.

<sup>19</sup> See E. B. Graves, "Circumspecte Agatis" (*E.H.R.*, XLIII, Jan., 1928, 1-20); also H. Johnstone, "Archbishop Pecham and the Council of Lambeth of 1281" in *Essays in Medieval History Presented to T. F. Tout*, ed. by A. G. Little and F. M. Powicke (Manchester, 1925), 171-88; *C.M.H.*, VII, 400.

great conflict of his reign between the ruler and the secular lords. It was unfortunate, but it was something more than a coincidence.

In this connection, it is worth recalling Stubbs' famous comparison between Edward I and Henry II. Illuminating though it is,<sup>20</sup> this can possibly be somewhat extended. Three well-known enactments of Edward throw into sharp focus not only the resemblances but also the deep differences between the two reigns. If the rule of Henry witnessed the beginnings of movable property as an important item in the finance of the nation, a testimony to the growing power of commerce and fluidity of wealth, the rule of Edward showed an immensely greater importance achieved by wealth and commerce in the life of the nation, as testified by the Statute of Acton Burnell in 1283. This enactment, with its solicitude for the merchants, its methods of debt-recovery, its glimpse of a maturing economy, shows Edward I as the ruler of a society which had moved far from the conditions of Henry II's reign into those of the modern age. Edward, compared with even that business-like predecessor, was a New Monarch, preoccupied with business and management, organization, finance.

The Statute of Winchester two years later sums up another aspect of the age of transition. It reflects not only a new drive for law and order, the outcome of growing discipline and governmental activity in the nation, but also the increasing military importance of the smaller landed gentry who did not hold by military service from the Crown.<sup>21</sup> It was a landmark, though as it proved, not a turning-point, in the relations between the middle-class landowner and the Crown. It is a reminder of the fundamental nature of the problem of military service in the life of the nation, and the pressure which this changing

<sup>20</sup> *C.H.*, II, 110.

<sup>21</sup> This problem is discussed more fully in volume III of this present work.

problem constantly exerted on a warlike ruler such as Edward I. Henry II, like Edward, had fallen back on the nation in arms for his ultimate military needs; but Edward, unlike Henry, was tempted to use military service drawn from the nation to transform, rather than to supplement, the feudal host. Henry II was still bound by the main traditions laid down at the Conquest; Edward was at the beginning of an age when the military service of the feudal nobility would become a thing of the past. New forces were stirring all around Edward, as indeed they were around Henry; but those of the thirteenth century were to be in more direct and unbroken contact with the modern age.

The parallel between Edward's inquest of 1289 into the acts of his judges and other officials and Henry II's famous inquest of sheriffs in 1170 is close and striking. It shows the ultimate identity of the aims of either monarch, the fidelity of both to the best traditions of the age. Henry's inquest shows the growing strength of the monarchy as a result of immense and fruitful expansion; but Edward's shows the results of that expansion, hardly perceptible in the time of the second Henry, in the growth of the bureaucracy which lies at the basis of the modern state. Edward I showed, in 1289 and 1290, that he was capable of attacking resolutely the problem of ministerial oppression; but his action—the action of a good, efficient ruler temporarily removed from his immediate control over the kingdom by the needs of his Gascon lands—shows more than all the discords and tumults of Henry III's reign, how powerful the king's ministers had become, for good or evil, how serious the problem they presented in the state. Here again, Edward was fairly in touch with the world of the future. He was drawn onward by forces even more dynamic than those which had moved either Henry II or Henry III.

Edward's sensitive reaction to the growing nationalism

of England, and his contribution to the evolution of a national state, were bound to bring him into acute difficulties with both his secular and ecclesiastical subjects; but they had their brighter side. They gave him the beginnings of a regular national income, a more fluid and adaptable system of military service, a more secure control than that which any of his predecessors had ever exercised, over the outlying portions of his realm. These things enabled him to achieve the conquest of Wales and attempt the conquest of Scotland; and these successes, in turn, helped far more than the preoccupation of John and Henry with Normandy and Poitou, to undermine the regionalism of the Welsh Marches and even of the North. The closely interrelated magnates of these areas were to play a decisive part in English politics long after Edward's lifetime; but a great stride was taken, in that lifetime, to make them an integral part of the English political scene. The summary treatment, in 1291, of the great Earls of Gloucester and Hereford, natural leaders of the magnates of the Welsh border, for indulging in the Marcher privilege of private war, was a notable exercise of a royal power that was grounded in the loyalty and support of the nation as a whole. The national struggle against Scotland absorbed and transcended the regional ambitions of the northern lords.

It was at Carlisle in 1307, on the border of Scotland, towards the end of his long reign, that Edward stood forth for the last time unmistakably as the national ruler, when he rallied the nation behind him in a memorable stand against some aspects of Papal policy towards England.<sup>22</sup> Clearly in line with this national opposition to annates and provisions was the earlier reply to the bull of June, 1299 in which Boniface VIII claimed Scotland as a fief of Rome. It is the custom of the realm of England,

<sup>22</sup> Lunt, *Financial Relations of the Papacy*, 490; and "William Testa and the Parliament of Carlisle" (*E.H.R.*, **XLI**, July, 1926, 332-57).

Edward then said, that in all things touching the state of the said realm there should be asked the counsel of all whom the matter concerns; and seven earls and ninety-seven barons rejected the claims of the Pope, for themselves and for all the community of the land. Whatever the exact significance of these actions—and they will be discussed in a later volume—there can be little doubt that they reflect, in part at least, the national consciousness of England, summed up by, and expressed in the person of, the nation's king. They were not unprecedented. There were clear antecedents in the reign of Henry III. But perhaps no moments in English history had as yet been so clearly infused with the spirit of a united English nation, respecting the claims of the universal Church, recognizing the larger unity of Christendom, but tenacious of its own constitution, its grievances and its rights. No monarch before Edward had ever proclaimed abroad, so emphatically, the principles of co-operation and consent which lay at the basis of the operation of the English state.

Above all, Edward's constitutionalism and his reaction to the growing self-consciousness of the nation is shown in his use of parliaments throughout the whole period of his reign. The problem of the king's inner council, which had distracted the land under Henry, was partly in abeyance under his son just because Edward accepted and used freely the great council which his father had attempted to leave on one side. Whatever problems remained to be solved in regard to this latter assembly, there can be little doubt that Edward accepted and developed it as no monarch had ever done before. When Edward, in the Statute of Carlisle declared that he was bound to provide remedies for abuses, in parliament and "by the counsel of the earls, barons, magnates, *proceres* and other nobles and of the commons of the realm,"<sup>23</sup>

<sup>23</sup> Statute of Carlisle; *Statutes of the Realm*; I, 151.

he was summing up a very notable advance in the history of that institution, an advance which brought it to the very threshold of its modern growth. Stubbs may not have been far wrong in his opinion of Edward as the great architect of parliament, though perhaps he did not grasp the full significance of developments which had occurred before 1272. Edward I was the first king in English history who was a parliamentarian. He was the first English king to begin to take the nation into a real partnership in many major problems attending the working of the state. In this he was simply giving effect, in the spirit of 1266, to the ancient tradition. Without attempting to ignore the limits to his concessions, noticed below, and the dangers inherent in his ambitions, his successes and the strength of his personality and his position, it still seems to be true that he was essentially a feudal monarch in the best sense of the term, dominated by the feudal concept of a monarch's duties and obligations as well as of his powers, accepting the great lessons of the Barons' Wars and the best ideals of Simon de Montfort, and applying them with a real measure of integrity and ability through a long and eventful reign of thirty-five years.

## VI

THE only bitter struggle between Edward I and his magnates was that of 1297,<sup>1</sup> though this left misunderstandings and suspicions which remained until the end of the reign. It occurred, in spite of all Edward's ability and good intentions, because his needs led him to make the same high-handed demands on his subjects as Henry and John had made; because the settlement of 1266-67 had not ended the constitutional problem, but merely changed it; and because, in the swiftly changing circumstances of the thirteenth century, the king and the people

<sup>1</sup> This is discussed in detail in chap. v, below.

inevitably tended to take different views of their mutual responsibilities and duties in the state.

Edward's difficulties during the years 1293 to 1297 have been touched on below and need no recapitulation. They had led him into oppression of the clergy, taxation of the community, and demands for military service which affected the pockets, comfort, or security of all the politically articulate sections of the nation. They may well have filled them with a deep distrust of a monarch who, even for the safety of the nation, could claim and exercise such unprecedented powers. The seizure of all wool in the country in 1297, usually with only tallies given in payment, was only the last of a series of similar, if less flagrant, impositions on the traffic in wool. The writs of May 15, 1297 extended the duty of military service to include all who held land of the annual value of £20 of whomsoever they held. These tenants did not necessarily hold by knight service; but were to serve (as it turned out) for duty overseas. This may have been only a logical extension of Henry III's plans to extend military service in 1253 and 1254. In any case, it was perhaps as important as any single action by the ruler precipitating the crisis of 1297.

The significance of these developments needs further discussion, for it has not always been adequately set forth. Stubbs' belief that in these days and by these methods Edward I tried to assume a dictatorship,<sup>2</sup> perhaps does less than justice to the integrity of the ruler, but may be taken to represent not unfairly the long-term consequences which might have arisen from Edward's acts. Consciously or unconsciously Edward, in the years preceding 1297, had asserted the power of the new national monarchy over the church in England. He had diminished the military importance of the magnates. He had secured a large degree of independence in taxation

<sup>2</sup> *C.H.*, II, 139.

for the monarch. He had based the royal position on a new relationship between the ruler and the merchants and knights. In fact, Edward, in some restricted sense, anticipated in the thirteenth century the position of the New Monarchs of the sixteenth century, who reached out towards absolutism through an alliance with the bourgeoisie. It seems probable that neither Edward nor his contemporaries had any clear notion of the potentialities, for absolutism, of the new relationships he was creating under a stress of war; but on the other hand, there is little reason to doubt that the magnates of 1297 were right in fearing that unfortunate consequences were likely to follow from the powers which Edward had, perhaps not altogether unwillingly, been compelled to assume.

The crisis of 1297 was, indeed, in no sense merely the outcome of an accidental clash of personalities. That is one reason why historians must always at least suspect that there was more than "sheer wilfulness" behind the "antiquated quibble"<sup>3</sup> of Bohun and Bigod, when Bohun refused, in February 1297, to serve abroad except in the presence of the king. The crisis brought to the surface deep constitutional problems which had continued to exist beneath the surface ever since the settlement of 1266.

The royalist restoration of 1266-67 had included an acceptance of the principle of government by counsel and consent and the supremacy of the institution of parliament which included both the king and the nation; but the detailed interpretation of this principle and the formulation of parliamentary procedure proved to be almost as important and difficult, in the years which followed, as had the establishment of the principle itself. Edward I was prepared to co-operate with the nation, but the co-operation he offered was subject to his own

<sup>3</sup> *Ibid.*, 138, 139.

reservations and on his own terms. He accepted the idea of national and feudal monarchy, but he did not abrogate the supreme control over the executive and over the destinies of the nation which had been claimed, in different terms and under different circumstances, by Henry III. Secure in the knowledge of his own good intentions, he expected to lead and command a willing people. He would concede as much as he felt was right and proper; but he would reserve for himself the vast, decisive, reserves of royal prerogative which had from time immemorial resided in the hands of the king. This was not autocracy: it was the authentic tradition of monarchy, based on the real needs of the early medieval state. Nobody seriously questioned it in the thirteenth century. The nation did not yet ask for any further share in the government, beyond that the government should be founded on their agreement and assent. Outside the few matters covered by Magna Carta and those established by precedent and mutual agreement, there were wide varieties of executive action vital to the welfare of the community which had not yet been brought clearly within the purview of parliament. It was natural that Edward, in these matters, pressed the claims of the ruler; and it was natural that these matters provided cause for friction, as the great expansion in the institutions of government rapidly progressed during his reign.

The opposition against Edward I in 1297 did not demand, as had the opposition to Henry, a fundamental reorganization of the government. There was no attempt to take the rule over the country out of the hands of the monarch. The basis of Edward's government was sound, and had been universally accepted. What was proposed in 1297 was a clarification and definition of certain points in the application of the ancient tradition, which Edward had interpreted much too favourably to the Crown. There was to be no extension of military service, it was

demanded, on the basis of national loyalty to the monarch, without the old feudal limitations, and without the safeguard of the strong baronial interest which had both the power and the experience to look after itself. There was to be no indefinite expansion of the system of taxation which had been accepted by the nation in 1275, either by the abuse of royal powers of tallage or purveyance, or by pressure on weaker sections of the nation which had not the solidarity of the nobles or their protection of feudal custom and right. In short, government was to continue to be co-operation between the king and the "nation," not between the king and sections of the nation, newly risen to participation in the affairs of state, and liable to be manipulated by the ruler in the interests of the royal power.

It is true that in their demand for the abolition of the *maltolt*, put forward in the *De Tallagio non Concedendo*, and in their opposition to military service in Flanders, expressed in the *Monstraunces*, a section of the nation took advantage of Edward's difficulties to put forward an interpretation of the constitution as extreme as his own. Military service from tenants-in-chief had become inadequate. Without a great extension of this service, the armies which Edward needed could not be provided, unless it was by means of a regular and extended system of taxation to hire professional soldiers, and such a system was virtually denied him in the baronial claims of 1297. In this crisis the nation showed shortcomings equal to, if different from, those of Edward himself. They had not yet learned, and were not to learn for some generations, that their new claims and new powers in parliament must be matched by an extension of their duties and responsibilities in the state. If Edward could not simply use the military and economic power of the new "middle" classes to strengthen the ancient monarchy in a new parliamentary setting, his subjects

could not simply restrict their material contributions in the new state to the ancient feudal obligations and dues.

Both sides had a good deal to learn from this crisis. Edward was sharply reminded of the changing implications of the monarchical tradition and his increasing, not diminishing, dependence on the community of the realm. He learned that the details of co-operation mattered as well as the principle. Each new demand of the ruler had still to be established with the consent of the people. Magna Carta still, as ever, expressed real and effective limitations on the royal power. The magnates and the community of the land, for their part, rediscovered the community of their interests which had been obscured since the Barons' Wars but which had, in reality, been strengthened by every passing year. The dangers inherent in Edward's sectional appeals to the nation recreated a national opposition which, whatever its shortcomings, vindicated the ancient political ideals in face of the most powerful ruler England had ever seen. Such a national opposition, we now know, was a step on the road of constitutional advance; but it could not appear in this light to Edward. To him, it was reminiscent of the revolutionary opposition to his father and grandfather, something which had the air of a national conspiracy against the legitimate interests of the Crown.

Both the circumstances of the struggle of 1297 and the character of its chief protagonists prevented the achievement of the best result. Bohun and Bigod, though perhaps much greater men than they have often been painted, do not seem to have risen to the full measure of their opportunities as representatives of the nation. The king never seems to have given the same generous recognition of the real principles underlying this opposition as he had in the case of the baronial opposition of 1258-65. The magnates failed to make sufficient concessions, in spite of minor changes in the *De Tallagio non Conce-*

*dendo*, probably introduced at the instance of the council in England, to the genuine needs of government at the end of the thirteenth century; whilst Edward failed to disarm the opposition after 1297 by a revival of the sympathy and understanding, between himself and the nation, which had existed in the first years of his reign. England was deeply divided, not united, by the results of the crisis of 1297. These divisions continued, in some measure, for the remainder of Edward's reign. They reacted with fatal consequences on the weak and incompetent administration of his son.

After 1297 Bohun and Bigod were never completely restored to royal favour. The former died in 1299. His son Humphrey in 1302 married Edward's daughter Elizabeth; but before the marriage he surrendered his rights in the Earldom of Hereford, the Constablership and all his castles and lands, to receive them back jointly with his wife. Roger Bigod, in the same year, entailed his Earldom of Norfolk, the Marshalsea and all his lands, under conditions which made it certain that they would at his death escheat to the Crown. Archbishop Winchelsea was finally humiliated in 1306. There was clear distrust between Edward and his subjects. The king in 1299 repeated the *Confirmatio*, under a baronial, and perhaps also a popular, pressure which speaks eloquently of mutual distrust.<sup>4</sup> However, ruler and nation were brought closer together again by Pope Boniface VIII's claim that Scotland was a fief of the Apostolic See;<sup>5</sup> and the *Articuli super Cartas* of 1300 seem to have been a genuine act of conciliation. They were a recognition by Edward that the procedure for obtaining redress of grievances due to the violation of Magna Carta was still imperfect, that the prolonged wars were causing real hardship, and that he

<sup>4</sup> Hemingburgh, *Chronicon*, ed. by H. C. Hamilton (2 vols.; London, 1844-49), II, 182-3. See Document viii, Chapter v, below.

<sup>5</sup> *Ibid.*, 189-213.

had to make a genuine effort to get a more willing support in his campaigns.<sup>6</sup> It is significant that in the *Articuli* he turned once more to the lesser gentry. By conceding them the election of local justices to remedy complaints, he did something to repair the breach which the events of 1297 had created between them and the Crown. But the alliance of the king and nation against the Papacy was still premature and likely to be transient. The *Articuli*, in spite of their good intentions, were a product of increasing baronial pressure which Edward associated with the movement of Bohun and Bigod, and both resented and feared.<sup>7</sup> They contained several valuable reforms<sup>8</sup> in the details of law and administration, but they were accepted by neither side as a solution to the current problem of government. It must have begun to be apparent to all that confirmations of Magna Carta and redress of infringement did not touch the heart of the issues that had in recent years been raised between the nation and Edward I.

The harmony and co-operation, by which Edward and his subjects had made a notable contribution to the practice of rule by discussion and consent, partly destroyed in 1297, could not be easily restored. There is little doubt that the mutual distrust of these last years of Edward once more brought to the forefront deep questions about the nature of sovereignty in England which had been in abeyance ever since the death of Simon de Montfort. The *Confirmatio Cartarum* had been a great and lasting step forward, but it had again raised acutely in England the question of the king's ultimate power. This was not to be once more thrust into the background until the end of the tragedy of Edward II.

<sup>6</sup> *Foedera*, ed. by T. R. Rymer (Record Commission, 1816), I, part ii, 920; V. H. Galbraith, "St. Edmundsbury Chronicle, 1296-1301" (*E.H.R.*, LVIII, Jan., 1943, 73).

<sup>7</sup> Rishanger, *Chronica*, ed. by H. T. Riley (R.S., 1865), 405.

<sup>8</sup> *Statutes of the Realm*, I, 136-41.

In the last clause of the *Articuli*, Edward insisted strongly that "both the king and his council, and all they that were present in the making of this ordinance, will and intend that the right and prerogative of his crown shall be saved in all things,"<sup>9</sup> just as, in the confirmation of Magna Carta in 1299 the king had tried to add a reservation "saving the rights of his crown."<sup>10</sup> He made this reservation again, in the Forest Perambulations of 1300, and it may be doubted if the spirit of the reservation was merely one of "pettifogging resistance" as Professor Petit-Dutaillis believed.<sup>11</sup> In 1301 Edward refused to complete the disafforests promised in the previous year, unless his prelates and barons could assure him that this could be done without infringing his coronation oath and without detriment to the Crown.<sup>12</sup> The magnates, for their part, put forward twelve articles through Henry of Keighley, knight of the shire for Lancashire, demanding another confirmation of the Charters, immediate disafforestation, the abolition of the abuses of purveyance, and other reforms. Annoyed by these demands, which he called outrageous,<sup>13</sup> Edward conceded most of them, but ordered Henry of Keighley to be imprisoned. Probably what most offended the king was the fact that the articles almost certainly represented an alliance between the magnates and the "community of the land" such as had humiliated him in 1297. Some of the articles came from this "community"; Henry was a knight of the shire; his requests had been endorsed by the prelates and *proceres*, in the form of a bill. Thus the co-operation of king and people in parliament which Edward had, for

<sup>9</sup> *Ibid.*, 141; Bémont, *Chartes des Libertés Anglaises, 1100-1305* (Paris, 1892), 108.

<sup>10</sup> Hemingburgh, *Chronicon*, II, 183.

<sup>11</sup> Petit-Dutaillis and Lefebvre, *Studies and Notes Supplementary to Stubbs' Constitutional History*, II, 223; cf. M. L. Bazeley, "The Extent of the English Forest in the Thirteenth Century" (*T.R.H.S.*, IVth Series, IV, 1921, 159).

<sup>12</sup> F. Palgrave, *Parliamentary Writs and Writs of Military Summons* (2 vols., in 5 parts; London, 1827-34), I, 104.

<sup>13</sup> See the letter from Edward to his Treasurer, printed in *C.H.*, II, 158, n. 1.

the most part, loyally accepted and practised for over thirty years, was again threatening to break down. It was being turned against the ruler. Edward I was being driven, in these years, in spite of his prestige and record of service to the nation, into the defensive position of Henry III. There is no doubt that his rule had become oppressive. The demand of the opposition for safeguards was justified. But it was becoming apparent that these necessitated reforms and changes in the constitution more extensive and revolutionary than anything which had been witnessed in England since the death of Simon de Montfort in 1265.

How wide the rift had become by 1307, is not clearly apparent; but on the whole, the evidence suggests that it had become very wide. In 1305, the king obtained from Clement V a bull,<sup>14</sup> clearly based on that of Urban IV which had annulled the Provisions of Oxford, which absolved him from the various and unjust concessions relating to the forests and other rights of the Crown. These, it said, Edward had been forced to yield whilst defending himself against his enemies overseas. Bohun and Bigod had "conspired against him, stirred up by the people, and had disseminated many scandals." The bull contained a clause reserving the rights which the nation had enjoyed before these concessions; but after the king had obtained it, he was in a position to annul everything he had surrendered to the nation during and after the crisis of 1297. It has been suggested that Edward intended even to withdraw the rights guaranteed by Magna Carta,<sup>15</sup> but this seems to be very doubtful. Edward used Clement's annulment only to revoke the disafforestations conceded in 1301, and then, as Stubbs says,<sup>16</sup> only to pardon trespasses committed in consequence.<sup>17</sup> Still,

<sup>14</sup> Document ix, Chapter v, below.

<sup>15</sup> H. G. Richardson, "English Coronation Oath" (*T.R.H.S.*, IVth Series, XXIII, 1941, 129-58).

<sup>16</sup> *C.H.*, II, 162.

<sup>17</sup> *Statutes of the Realm*, I, 149.

it seems clear that Edward considered the whole movement of 1297 to have detracted unjustifiably from the rights of the Crown. It was apparently, in the eyes of Clement, linked with the baronial movement of opposition to Henry III. The bull of 1305 may have been the prelude to a strong consolidation of the position of the monarch against a rising tide of attack.

Edward may not have wished to go back on all his previous concessions. But he did wish to be in a position to go back on them. He condemned the whole "revolutionary" movement since 1297, with its demands for redress of grievances, its baronial assemblies like that of Northampton in 1297, and coalitions of his subjects, like those of 1297 and 1301. The proper way to change the constitution was by the initiative of king and council and the assent of the community of the realm as, indeed, was later asserted in the Statute of York. Edward probably felt that the nation was losing sight of this essential tradition. In claiming justice for itself it denied justice to the ruler. Yet the political obligation was mutual; and it was an obligation on the part of the king to rule, on the part of the subject, not to coerce and threaten with obstruction, but to co-operate and agree. What Edward was defending in 1305 was not simply the royal prerogative, but the old tradition of legislation as he conceived it, and the old relations between the various sections of the nation and the king. How right he was in his forebodings,<sup>18</sup> though how wrong in his methods, may be seen from the events of 1308.

The procedure of government by counsel and consent had developed too fast and too far for Edward in his later years. Major questions of statecraft were now

<sup>18</sup> It is interesting to notice the assertion, in a case in the Mayor's Court in London in 1299, that "no parliament can take place relating to the Kingdom, without the King and his council," perhaps reflecting official anxiety on this score; A. H. Thomas, "The Medieval Municipal History of London" (*T.R.H.S.*, IVth Series, IV, 1921, 91). Public opinion had travelled a long way since Henry III transacted what was later to be the business of parliament, without consulting the magnates of the realm.

habitually debated in parliament as a matter of course. Edward had to stoop to propaganda, and to a publicizing of his intentions and needs, of which his predecessors would never have dreamed. The principle of consent to taxation, virtually established in 1297, had made the ruler still further dependent on the nation. But the nation was not always using its powers with a sense of responsibility and restraint. Constant demands for confirmations of Magna Carta and redress of grievances were humiliating to a ruler who had lived in the grand traditions of Westminster I and II. The ruler was finding that the ancient tradition of government operating through the new parliament could be very restrictive. The nation was proving readier at complaints and obstruction than at co-operation and consent.

It is clear that the later years of Edward marked the end of a stage in constitutional development in England. The nation was once more challenging the ruler for what it considered its proper share in government, as it had done under Henry III. The terms of the national act of co-operation were once more in dispute, with the magnates and commons making new claims to initiate major governmental changes, and the monarch reverting to a defence of the ancient undisputed supremacy of the Crown. Edward was now almost as stubborn and uncompromising as his father. When he died in 1307, troubles were gathering thick and heavy, at home and abroad. The constitution was once more fluid and uncertain. Foreign affairs were precarious and might become disastrous. A young and incompetent son was to take up the heavy burden of maintaining the interests of the nation and of the Crown. Hence it is not surprising that a crisis began for Edward II even before his coronation, and that his reign was one of the most disturbed, unhappy, and important, in the history of the medieval state.

## CHAPTER I

# The Ending of the Minority of Henry III

### (a) *Some Recent Works*<sup>1</sup>

- DENHOLM-YOUNG, N., "A Letter from the Council to Pope Honorius III, 1220-1" (*English Historical Review*, LX, Jan., 1945, 88-97).
- JACOB, E. F., "The Reign of Henry III; Some Suggestions" (*Transactions of the Royal Historical Society*, IVth Series, X, 1927, 21-53).
- JARMAN, T. L., *William Marshal First Earl of Pembroke* (Oxford, 1930).
- JOLLIFFE, J. E. A., *The Constitutional History of Medieval England* (London, 1937).
- LAPSLY, GAILLARD, "Some Recent Advances in English Constitutional History (before 1485)" (*Cambridge Historical Journal*, V, 1936, 119-61).
- NORGATE, K., *The Minority of Henry III* (London, 1912).
- PAINTER, S., *William Marshal* (Baltimore, 1933).
- POWICKE, SIR F. M., "The Chancery during the Minority of Henry III" (*English Historical Review*, XXIII, April, 1908, 220-35).  
—*King Henry III and the Lord Edward* (2 vols.; Oxford, 1947).
- TOUT, T. F., *Chapters in the Administrative History of Medieval England*, volume I (Manchester, 1920).

<sup>1</sup> The references to the general works of Powicke, Lapsley, Jolliffe, and Wilkinson will not be repeated in the brief bibliographies given in the chapters below.

TURNER, H. G., "The Minority of Henry III" (*Transactions of the Royal Historical Society*, New Series, XVIII, 245-95).

WILKINSON, B., *Studies in the Constitutional History of the Thirteenth and Fourteenth Centuries* (Manchester, 1937).

(b) *Introduction to the Documents*

OUT of a great many documents which are available, eight have been selected as the most interesting and important for the period of the Minority of Henry III. These are: (1) A letter from Pandulf, the Papal Legate, to Ralph Neville, the Vice-Chancellor, on May 16, 1219. Selecting this as the earliest document to translate means that nothing is given to illustrate the earliest period of the Minority when the Earl Marshal, William of Pembroke, was *rector regis et regni*; but there seems to be no important constitutional problem regarding this period which cannot be illustrated and explained with reference to the later and more controversial part of the Minority; and there is no outstanding document to translate except the poetic *Histoire de Guillaume le Maréchal*, which does not lend itself well for our purpose.<sup>2</sup> In any case it seems probable that the letter of the Legate, properly understood, will throw a good deal of light on the constitutional situation on the eve of the great Marshal's death and the termination of the unprecedented office of guardian of the king and the kingdom which he had held. (2) A second letter, this time from Hubert de Burgh, Justiciar, to Eustace of Fauconberg, the Treasurer, and to Ralph Neville, dated May 6, 1220. This throws a flood of light on the obscure arrangements for governing England after the death of the Earl Marshal, and still more on the significance of king Henry's second coronation, which took place in the same month. (3) The third document

<sup>2</sup> The activities of William Marshal as *rector regis et regni* have been well described by Professor Painter, *William Marshal*, 228-89.

is the account by Roger of Wendover, the best chronicler of the period, of the famous episode of 1223, when Pope Honorius III declared Henry to be of age to take over a part, at least, of the government of the realm. It throws more light on the distinctions which lay behind the government of the Minority, and introduces us fully to the great question of the aims and policy of the young Henry himself. (4) Document four is a Papal bull, sent by Gregory IX on April 13, 1227. It was probably a repetition of an earlier letter by Honorius, dated 1223. This was one of a group of letters which were obtained by Henry when he made his first and most important step towards the assumption of full royal power. (5) The fifth document consists of the complaints of Falkes de Breauté, a Norman refugee who had come to England in the reign of John, and had rendered great service to that ruler, but who was disgraced and broken by Hubert de Burgh and Henry III in 1225. His complaints were addressed to the Pope in 1225, and give a most interesting and important version of what had occurred, especially in 1223. (6) Alongside this complaint, is still another document illustrating this important landmark of the Minority, namely a letter of Honorius, dated November 20, 1223, ordering the suspension of previous letters which had been issued to the Earl of Chester and others. The earlier letters had commanded them to surrender the royal castles in their charge. All these documents fit in with each other, and help us to understand one of the most significant and little understood episodes of the reign of Henry III. (7) The last document but one, again from Roger of Wendover, is an account, the only detailed account to survive, of the last stage in the achievement by Henry of his Majority and of full power over the government. It is the well-known declaration by Henry in 1227, that in future he was going to rule chiefly by himself. (8) The final document consists of extracts from

Hubert de Burgh's defence in 1239, which gives us Hubert's version of the constitutional position after the death of the Earl Marshal in 1219, and his explanation of some of the changes by which he and his master, Henry, took over the government of the state.

Most of these documents have not previously been regarded as being of constitutional importance, and their selection from many others has been so difficult that in order to justify this selection, a word must be said about the constitutional issues involved in the Minority of Henry III. The first problem is that of the division of responsibilities and functions in the government of the country whilst Henry was a minor, especially after the death of the Earl Marshal, whose title of *rector regis et regni* suggests that, while he lived, he alone had supreme control over all affairs. There has been a great deal of confusion on this subject, because nobody has worked out the underlying ideas on which any regency of that period was likely to be formed. The most fundamental of these was the distinction between matters pertaining to the king alone on the one hand (*the negotia regis*), and matters pertaining to the kingdom or to the community of the kingdom (*negotia regni*), on the other. This distinction was perhaps implicit in the very title of the Earl Marshal, and can be seen clearly in the correspondence of the time, for example that gathered together by Mr. Shirley in his two volumes of *Royal Letters*. It will be very frequently referred to below. The fundamental difference between the two types of business, natural enough in itself, but largely ignored by historians in the past, is that one type could be disposed of by the king alone, or with such advisers only as he chose; the other, since it concerned the community, could be disposed of only with their assent and advice. This difference had been very evident, a quarter of a century before the Minority, in the events of 1190 and 1191,

during Richard I's absence on the Third Crusade. The distinction has a very important bearing on the question of the distribution of powers and responsibilities during the Minority; it makes it almost impossible, for instance, that the Papal Legate should have exercised, without apparently having any clearly defined office, such unlimited control over the government as is frequently attributed to him by modern writers. The whole distinction, and the ideas associated with it, had a profound influence, not only on the events of the Minority itself, but also on all the development of the constitution throughout Henry's long reign. It is because they have an important bearing on this, amongst other questions, that the first few documents have been selected to form part of this group, though they involve some difficult problems of historical criticism.

The second problem concerns the establishment of Henry's personal control over the government and with it the establishment also of the main lines of policy which Henry was to follow throughout the remainder of his life. Henry's policy was the natural and almost inevitable response of any high-spirited boy to the circumstances in which he found himself, though it cannot be denied that the young king and his advisers carried it to excess. Its main lines have been given elsewhere. All that it is necessary to say here is that this problem gives very great importance to the documents, especially those relevant to the changes of 1220, 1223, and 1227, which throw light on the most formative period of Henry's reign. Their importance for the constitutional historian has perhaps been unduly ignored. With this double reason for their study, the difficult task of discussing briefly each of these documents may be undertaken at once.

In his letter to Ralph Neville of May 16, 1219, the Papal Legate gave to the Vice-Chancellor directions regarding the way he should conduct himself in his office

and dispose of the seal in his charge if he took a holiday. The letter does not stand alone. Similar letters, some containing even more pointed commands, are extant. The conclusion which they seem to have suggested to some historians is that Pandulf, after the death of the Earl Marshal, and even during the period when the latter was dying, was the real ruler of England. He was the successor, though not in name, to the office of *rector regis et regni* which had been held by the Earl. There is strong evidence against this view, including some from the *History* of William the Marshal; but the apparently conclusive proof provided by the Legate's own letters has led most historians to set all other evidence aside. That the power of the Legate was great, there can be no doubt, nor is this surprising; but it will be suggested below that it had definite limitations. The Legate never succeeded the Earl as *rector regis et regni*. The limits to his authority were based on the distinctions between the different aspects of government already discussed. If the Legate's position can be defined, it may be suggested, then his sphere of government was the *negotia regis*, the business that affected the king only; he did not, and could not, alone dispose of the business that affected the community of the realm.

There is a good deal of evidence for this suggestion, some of it in the letters translated below. Exactly what was included in *negotia regis*, has never yet been worked out. It almost certainly consisted, in part, of the responsibility for the custody of royal castles. Another aspect of it was the conduct of foreign affairs, or the relations of the ruler with other rulers. Still another aspect was the care of the king's moneys, in other words the collection and spending of the royal income, which was the work of the Treasury and Exchequer. The *negotia regis* did not include legislation which affected the king's subjects, or possibly that part of the administration of law which

affected all freemen of the land. The latter was particularly the province of the Chancery, the office of the Great Seal which was the instrument by which the Common Law was carried out. It is not possible here to give the whole question the examination it deserves, or to discuss the evidence which exists relating to it; but it seems likely that the distinction between the king's business and other business affecting his subjects followed roughly the lines suggested above.

If this is true, the significance of the Legate's letters to Ralph Neville depends largely on what business Ralph was engaged in when he got the letters, and on which seal he had under his care. All the recent writers on the subject have concluded that the seal, over the disposal and use of which the Legate had such authority, was the Great Seal; and their views as to the all-inclusive nature of his authority follow almost as a matter of course; for if Pandulf could exercise authority over the Great Seal and the office of the Chancery, it is obvious that no part of the government was, under the circumstances, outside his control. The evidence on this point is, however, inconclusive. Indeed, when we have examined it, we may perhaps venture to conclude that it points, on the whole, another way.

The seal which Ralph Neville had in his charge, it is here suggested, was the Exchequer Seal. Thus the business which Ralph and the Legate disposed of so completely was that of the king's finances which, as we have seen, fell within the sphere of the *negotia regis*. How much freedom the Legate had to dispose of such business whilst the Marshal was *rector regis et regni* we do not know; but this is not relevant to the problem at the moment. The Marshal lay dying when the Legate wrote his letters, and this fact would in any case account for the taking of somewhat exceptional measures by him and by Ralph Neville. Professor Tout, who argued that the

seal in question was the Great Seal,<sup>3</sup> attached much importance to the fact that in one of his letters Pandulf commanded the seal to remain in the Exchequer. This would at first sight suggest that it was the Exchequer Seal, since this seal was always kept in the Exchequer, but Professor Tout did not draw this conclusion. He did not think that there would have been any need to order the Exchequer Seal to remain in the Exchequer since it never went out. The seal in question therefore must, he thought, have been the perambulatory Great Seal.

A close inspection of the letter in question, however, shows that Pandulf did not merely issue a general order that the seal should not go out of the Exchequer. What he was forbidding was its removal as a result of some particular command. The seal, he said in his letter, must not go out by reason of a command from anybody. This applied more to the Exchequer Seal than to the Great Seal, for no special command was necessary to take the latter on its perambulations, so far as we know, even in the Minority of the king. The fact that the *rector regis et regni* lay dying would fully explain Pandulf's anxiety that, in the state of uncertainty which might follow, nobody should obtain the control over the seal of the Exchequer, the key to the finances of the state, without his full knowledge and consent.

An even stronger argument against Professor Tout's view is to be found in the Legate's injunction to Ralph (printed below). If Ralph took a vacation he was to deposit the seal in the Temple, providing that there was nothing to be done in the Exchequer. The fact that there was nothing to be done in the Exchequer would not release the Great Seal from its unending duties. Thus it is hard to see the point of the Legate's remark if he had had the Great Seal in mind. On the whole therefore, it seems possible to conclude that this and other injunc-

<sup>3</sup> *Chapters*, I, 183.

tions, from the Legate to Ralph, show both of them pre-occupied with the affairs of the Exchequer, that is, with the *negotia regis*. In his letter, Pandulf urged Ralph to forward the business of the church and of the king. Thus the whole group of letters from the Legate to the Vice-Chancellor show them both with a wide and intelligible authority over the *negotia regis*, but do not show them, as has been suggested, exercising the full authority of *rector regis et regni*, over all the business of the state.

In the second document, the letter from Hubert de Burgh to the Treasurer and Vice-Chancellor, Hubert tells of an interview he has just had with messengers from the Legate. This brief letter would be significant whenever it was written; but its date is particularly important because its contents may be connected with the changes in the government which took place at Henry's second coronation in May, 1220. The date is, however, uncertain. The letter, which is of course undated as regards the year, has been variously assigned to May, 1220 and May, 1219. The problem is so important for us that it must be discussed at some length.

Mr. Shirley had what seemed to be the right solution when, in his *Royal Letters*, he printed this letter as one of a group, in which communications were exchanged between Pandulf and the ministers of the Minority, such as, for instance, the letters to Ralph Neville, already discussed. He placed them all as being written in the year 1220. However, Professor Powicke was able to show that this could not be the case, for reasons which need not be given here. He therefore assigned them all to the year 1219, for which he made out a convincing case. The problem was not quite disposed of, however, for both Mr. Shirley and Professor Powicke dealt with the letters as a group, whereas the grouping seems to have been an arbitrary, though easily intelligible act, on the part of Mr. Shirley himself. It follows therefore, that for pur-

poses of dating, each letter must necessarily be dealt with by itself. If the above letter is so dealt with, it seems likely that some of the arguments which Professor Powicke advanced, against the date which Mr. Shirley had given to the whole group, will not hold good in this particular instance. The date which we shall finally arrive at will be that of May, 1220, which is the month of Henry's second coronation.

The problem turns mainly on the whereabouts of Hubert de Burgh when he wrote the letter. On May 6, 1220, he was near Shrewsbury. But, Professor Powicke has argued, Hubert said he was at Windsor when he wrote the letter to Eustace and Ralph. He could not be in two places at once. Therefore the letter was probably written in 1219. In this year we know from other sources, that Hubert may have been in Windsor. The only flaw in this argument is the fact that the letter does not, in fact, actually contain an assertion that Hubert was at Windsor when he wrote. Hubert wrote to tell Eustace and Ralph of an interview he had just had with messengers of the Legate; and the messengers, he said, had told him that the Legate would hurry towards Windsor to discuss with Hubert in person. From this it is natural to assume that Hubert was in Windsor when he wrote; but it does not actually follow as a matter of course. If the date be taken as 1220, Hubert was, we know, at or near Shrewsbury on May 6. Since the king's coronation at Westminster came on the 17th of that month, Hubert would obviously have to travel from Shrewsbury to Westminster shortly after he wrote on May 6, and would very likely go through Windsor. Since the Legate was probably at Cirencester early in May in the year 1220, Windsor lay on or near the routes of both Pandulf and Hubert on their way to Westminster. It was entirely natural for Pandulf to suggest Windsor as the place where both could meet. In this case the royal town

becomes, not the place where the important letter by Hubert was written, but merely the place where he and the Legate could come together on their way to the coronation of the king.

If Professor Powicke's main objection to the date suggested by Mr. Shirley can thus be reduced to less formidable proportions, it looks as if the main argument put forward by the latter in favour of his date is still sufficient to decide the issue. This argument is to be found in the Legate's assertion that he was not leaving Cirencester until the messengers whom he had sent to Hubert had returned. The chronology of Pandulf's itinerary shows that it was possible for him to have waited for this return in 1220 but not in 1219. Therefore the former year (1220), is the most probable date of this letter of Hubert de Burgh.

The letter is, in consequence, to be connected with the events of the second coronation, and it remains to discuss briefly its importance in relation to these events. One of the most important results of the coronation was the assumption of a certain control over the *negotia regis* by the king. On the following day the magnates took an oath that they "would resign their castles and wardships at the will of the king."<sup>4</sup> How extensive this assumption was we do not know. If it was of any importance at all, it was bound to affect the positions of the chief ministers of the Minority and possibly that of Pandulf himself. We do not know with any certainty what effect this reaction had, except in the case of one minister, Hubert de Burgh; but we can obtain a slight indication from the letter of Hubert, the date of which we have taken so much trouble to decide.

With regard to Hubert, we have some information, though it is very hard to understand. Thomas Wykes, a fairly reliable chronicler for this period, said that Hubert

<sup>4</sup> *Annals of Dunstable*, in *Annales Monastici*, III, 57.

was now made, amongst other things not so easy to believe, Justiciar "of all England," so that he might dispose of the business "of the king and of the kingdom."<sup>5</sup> There is some support from other writers,<sup>6</sup> but nothing conclusive, and we do not, in any case know exactly what such a statement means. However, it seems to mean at least an extension of Hubert's duties in the state. This is where the information given by the chroniclers seems to link up with the letter from Hubert to the Legate, for the letter seems to give some indication as to what the extension of Hubert's functions was.

The Legate sent to tell Hubert that he was prepared to be moved entirely by the counsels of the latter, to the honour of God and the profit of the lord king. He may have been merely affirming a willingness which he had always shown, to accept Hubert's advice, but it does not seem likely that he would have made an urgent message out of such a declaration, or that it would have initiated a discussion. In any case, we have the evidence of the chroniclers to suggest that there was, at this time, some extension of Hubert's powers. It seems reasonable to conclude, therefore, that the Legate had not, in the past, taken Hubert's advice in all the matters he mentions. Thus, the second coronation saw an extension of Hubert's influence into the field both of the church and of the *negotia regis*, and we may guess that it was this extension which called forth the somewhat ambiguous comments of the chronicler, and that it was the counterpart of an extension which took place in the activities of the king himself.

Hubert sent back to the Legate to tell him that if the latter would agree to the counsels of Eustace and of Ralph, then he (Hubert) would fully accept those of the Legate to the honour of God and the profit of the king

<sup>5</sup> *Chronicon, in Annales Monastici*, IV, 62.

<sup>6</sup> *Ibid.*, II, 291; III, 454.

and of the realm. Much speculation is aroused by this interesting reply, though there is no space to discuss it here. However, one or two brief observations should be made. In the first place, both Hubert and the Legate incidentally set forth their relative spheres of influence under the new arrangement which was proposed. That of the Legate, as already suggested above, was confined to the church and to *negotia regis*. This letter, therefore, is important confirmation of that theory, already set forth, as to Pandulf's responsibilities. On the other hand, Hubert's duties now extended to all aspects of government. We may guess that the changes of 1220 were a real step forward towards that ascendancy in the state which he achieved after 1223. We know that Peter des Roches suffered a diminution of his influence in England during 1221, when he went on a crusade. Whether or not we have here a glimpse into the setting up of an inner council, it is impossible, at this stage of our knowledge, to say.

Documents III, IV, and V are closely connected with each other and with the next great change of the Minority, which was effected by the declaration, in 1223, that Henry was of age to assume responsibility, not only for *negotia regis* but also for *negotia regni*. This meant the assumption of all royal business, with some reservations which have been brought out by Professor Powicke and Miss Norgate. It was probably a well-established tradition that the king could not dispose of all the business of the kingdom entirely on his own responsibility, without consulting any of his subjects; but it will be evident from these documents that he proposed to dispose of it very largely by himself. The first document is a very important account of the change made in 1223, given by Roger of Wendover, who was the best historian of the period. His story has been questioned, but it is supported by the other available evidence for the changes

of 1223, and there is no reason to doubt that Roger was reasonably well informed. He described a Papal bull to the archbishops and bishops of England, which declared that the Pope had adjudged Henry to be of age so that in future he might ordain the business of the kingdom principally (not exclusively, it should be noticed) by the counsel of his own servants. The king's castles, the bull said, should be surrendered to him, and any refusal should be overborne by ecclesiastical censure. The second document is a letter of Pope Gregory IX, dated April 13, 1227, addressed to the magnates of England, and declaring that Henry was of age to order the kingdom and the business of the kingdom. Though it is dated 1227, it is included in this group because there is reason to believe that it was a reissue of an earlier letter by Honorius III, dated April 13, 1223. It was evidently complementary to the one recorded by Roger of Wendover; indeed it was one of a whole group of letters sent out by the Pope on this occasion, for in it there is reference to Papal letters sent to Peter des Roches, Hubert de Burgh, and William Brewer. In these, Henry was granted the free and quiet disposition of his realm.

A further word should perhaps be said about the existence of this letter of Honorius III in 1223, for it is of considerable importance. It does not survive as a letter from Honorius at all, but from his successor Gregory IX, and is one of a group of letters dated 1227. However, we have what seems to be an *inspeximus* of one of these letters, the one addressed to Ralph Neville, and this is dated April 13, 1223. Moreover the copy of this letter in *The Red Book of the Exchequer*, has some curious features, as Miss Norgate has pointed out.<sup>7</sup> In it, Ralph is described as Vice-Chancellor and Bishop Elect of Chichester, titles which would be correct in 1223 but not in 1227. Miss Norgate accordingly suggested, very natur-

<sup>7</sup> *Minority of Henry III*, 287.

ally, that the scribe who entered the record of these letters in *The Red Book of the Exchequer* had simply made a slip, and dated the letters as of 1227 instead of 1223. This may be the correct solution to the problem, but there are some considerations which militate against it. The first is the fact that *The Red Book*, incorporating the researches and records of Alexander of Swereford, who was a contemporary official of the Exchequer, was one of the important records of the Exchequer, a department which did not often make such serious blunders. The second is that the year 1227 was the year in which Henry made his final declaration on the matter of his coming of age and assuming full royal power. It was thus a very likely date for the issue of such letters as these by the Pope, almost as likely as the year 1223. The third is the fact that the letters to the bishops, referred to by Roger of Wendover, were not recorded in the Red Book of the Exchequer. This may be simply an omission. On the other hand, there may have been none to record. Henry does not seem to have relied on the bishops in 1227, to the same extent as in the earlier year. Moreover, the general return of castles into the king's hand, prominent in the letter to the bishops, was not an important issue in 1227. The fourth consideration is that there is no letter recorded in the Red Book to Falkes de Breauté, although we know that he was one of the important personages who received letters in 1223. The reason for this omission may be the fact that Falkes died in 1226. Negative evidence of this kind cannot be conclusive; but the evidence of the dating in the Red Book is not negative. Until more information is forthcoming, it seems unwise, in spite of the strong arguments against it, simply to set it aside. Perhaps the true explanation of the matter is that Henry actually obtained two sets of Papal letters, to support both moves towards full authority; but that the letters of 1227 were, in the main, merely a reissue of those of 1223.

The third document, a copy of a letter of complaint addressed to the Pope by Falkes de Breaute, and recorded by Walter of Coventry, describes these important events of 1223 from the point of view of a prejudiced but well-informed participator in them. Falkes not only described the crisis of 1223 in some detail; he also described some of the events which, he said, led up to it, for instance the division of responsibilities in the government after the death of the Earl Marshal. He was naturally much more interested in the surrender of castles than in Henry's assumption of control over *negotia regni*; but in his narrative of events he describes the whole crisis. He suggests that it was brought on by this extension of Henry's powers as well as by the demand for the surrender of castles, and he has some important things to say about the position of the Archbishop of Canterbury, Stephen Langton.

The last document in this group is a letter from Honorius III, dated November 20, 1223, suspending the operation of letters which he had issued to Ranulf of Chester, Hubert de Burgh, and Falkes de Breaute, commanding them to surrender their castles. The letter almost certainly grew out of the complex situation described by Falkes in his Complaint. It throws an important light on the course of the crisis which followed the extension of Henry's power in 1223.

Taken together, these letters and documents have much information to give about this important landmark in the Minority of Henry III. They show the supreme importance of the constitutional distinction between *negotia regis* and *negotia regni*. This distinction was behind both the division of responsibilities between the officials of the regency and the steps whereby Henry brought the regency to an end. They throw light on Henry's own attitude towards the different aspects of government and towards the problem of assuming royal

power. For the sanction and support which he needed he turned, not to the *universitas regni*, but to the Papacy and the bishops; and he assumed control of the *negotia regni* as well as the *negotia regis*, not in order to dispose of it with the counsel and support of the magnates, but "principally by the counsel of his own servants." Whether this assertion by Wendover was strictly true or not we do not know. It may only have been Roger's somewhat malicious interpretation of Henry's intentions. But it is in line with everything else we know of Henry's attitude, and probably represented a widespread view. On his assumption of power Henry was certainly faced with a serious opposition from the magnates. He overcame it partly by the support of the bishops, and partly by the threat of ecclesiastical censure mentioned in the letter of the Pope.

On the whole, there is some reason to believe that the extension of Henry's power was both advised and supported by Hubert de Burgh.<sup>8</sup> One of its important features was the completion of the surrender of royal castles begun in 1220. Hubert had Papal letters to this effect addressed to the chief people concerned, including himself, Ranulf, Earl of Chester, and Peter des Roches. Yet, for whatever reason, he not only delayed in surrendering his own castles, but he also failed to give Henry the right to attest his own letters. Such a right was almost unquestionably included in the formal control over the *negotia regni* which had been conferred on Henry by the Pope.

The Papal letters of November 20 were probably a consequence of this twofold failure of Hubert de Burgh. Why Hubert had failed in this manner it seems impos-

<sup>8</sup> This assertion is possibly too strong; Professor Powicke (*King Henry III*, 57), believes that the "representations which produced the papal letters of April 1223 obviously came from quarters independent of the justiciar and his rivals, and later events confirm the impression that they came from Langton and his colleagues."

sible to say. It may have been because Ranulf of Chester and Peter des Roches had refused to surrender their position of power, or it may have been because Hubert was attempting to enforce a unilateral surrender of their castles by his opponents, which would leave him in supreme control over the state. In any case, the dissensions in the council of regency may well have been one reason why Honorius was willing to support Henry's assumption of personal rule, and also one reason why Henry made his assumption depend so exclusively on the backing of the Pope. Whatever the reason, the methods by which the king took the most important step towards his Majority in 1223, and the impression he managed to convey to his subjects, constituted a most inauspicious beginning to his personal rule.

Document VII contains the only surviving account of any importance regarding the final assumption by Henry, in 1227, of all the powers of a ruling king. Miss Norgate has strongly questioned the whole story, which was told by Roger of Wendover, on the grounds that it is so full of demonstrable inaccuracies that none of it should be believed;<sup>9</sup> but perhaps this scepticism is too extreme. Roger did not make quite as many mistakes as Miss Norgate suggested; and, in any case, he is one of the good medieval chroniclers, who was writing, in regard to the year 1227, not very many years after the events he describes. In spite of demonstrable inaccuracies, from which no medieval writer, and perhaps for that matter, no modern writer, is entirely free, any assertion which he makes deserves a careful hearing. Before a great council in February, 1227, he says Henry declared that "in future, freed from custody, he himself would principally ordain the royal business." This assertion, supported by the fact that Henry probably got letters from Gregory IX similar to those which he got from Honorius III in 1223, and by

<sup>9</sup> *Minority of Henry III*, 266.

other less important evidence, has every appearance of truth. If so, its significance may be very great. It marks, of course, the formal ending of the Minority, the removal of the last restraints on the freedom of action of the king. It looks as if it also represented the final triumph of Hubert de Burgh over Peter des Roches,<sup>10</sup> and the end of a process of whittling away the royal council until no effective member was left except Hubert himself. Thus it meant the exclusion from the council not only of Peter, but also of magnates like the Earl of Chester. At the least it was a strong declaration of freedom from tutelage. At the most it was a challenging assertion of Henry's interpretation of the royal duties he assumed.

It may thus mark the beginning of a policy which was followed persistently by the young ruler for many years, of deciding important acts of government without weighty and responsible advice, and without the counsel or consent of the *universitas regni*. Henry tended to ignore as far as possible the ancient distinction between those acts of the monarch which were generally regarded as affecting only himself, or at least for which he alone was responsible, and those acts which affected the nation, a distinction which had, as we have seen, been well recognized in the Minority itself. On the other hand he set out to accept as little co-operation as possible, in any of his actions, from the natural leaders of the nation. He did not, in 1227, as he had in 1223, accept the active support of the bishops; and even the backing of the Pope was pushed into the background. In the first flush of his royal power, he probably had little patience with those who would oppose his will by counsels of moderation and by pointing to the claims of tradition and the lessons of the recent past. He set out to solve the new problems that

<sup>10</sup> But see Professor Powicke's observation (*King Henry III*, 75), that "evidence available to us does not confirm the traditional view of Henry's minority as a struggle between the justiciar and the bishop."

had grown up regarding the relations of the monarch and his people, essentially in favour of the Crown.

The last document in this section consists of extracts from the defence which was prepared for Hubert de Burgh in 1239. This was some years after he had been replaced, as the inspirer of the policy of Henry III, by a group of able ministers and advisers, the chief of whom were Peter de Rivaux and Peter des Roches. The document is important, not so much for its defence of Hubert's policy, as for the incidental light it throws upon the early position of the Justiciar under the earl Marshal, and upon the crisis of 1223. Where it can be tested, it seems to be true to the facts. Recent writers even believe that, as Hubert asserts, it was Peter des Roches who had first sent to Honorius for the famous letters declaring Henry of age in 1223, though this is difficult to believe. But although Hubert could, and did claim, probably with justice, that it was by the counsel of the archbishops and bishops that Henry was given his seal in 1223, he could not, and did not, say that it was also by this counsel that Henry was declared of age. This was done, he claimed, "at the suggestion of the archbishops, bishops, earls and barons." The truth was, it seems probable, that they were hardly consulted at all. In this, and in his reference to the actual letters which Honorius had sent to different individuals, Hubert was probably guilty of evasion and concealment. His enemies had a strong case against him as the main instigator of the whole system of government which Henry set up. In this system, Henry showed himself to be hostile to the tradition of government by advice and consent. One origin of the system lay in the movement of 1223, and in particular in the letters of Honorius which his enemies believed Hubert to have inspired. It was these things, despite Hubert's later denials, which explain his great decline in the eyes of his countrymen after 1220, in spite of the very great services he had ren-

dered in the Civil Wars, both to John and Henry III and to the whole of the state.

Altogether, these documents give a good deal of material for understanding the main constitutional issues raised by the Minority of Henry III, and for understanding the relation of this Minority to the important events of the period of Henry's personal rule. The Minority set the stage for the events which were to follow. It witnessed the formulation of a definite and formidable royal policy aimed at a royalist restoration after the losses suffered since 1214, a policy whereby Henry hoped to preserve the powers and functions of his ancestors under the new conditions of the thirteenth century. He hoped, with the help of the new institution of the "Privy" Council, to interpret the ancient obligation of government by general consent in a sense very favourable to the Crown. His policy can be seen taking shape in 1220, 1223, and 1227, and alongside it, as a consequence, the baronial opposition which was to confront Henry all his reign, until it was finally liquidated or conciliated at Kenilworth and Ely, after the decisive Battle of Evesham in 1265.

The key to this policy seems to lie in the ancient formula *negotia regis et regni*, and the main purpose of this chapter has been to establish, for the first time, the constitutional importance of this formula at the beginning of the thirteenth century. By reference to it, we can understand the position of the Papal Legate in 1218, the assumption by Henry of responsibility for *negotia regis* in 1220 and of responsibility for the "business of the kingdom" in 1223. We can see more clearly the implications of the famous declaration of 1227. We can throw light on more than one of the important disputes between Henry and his subjects after 1232.

### (c) *Documents*

- I. Letter of Pandulf, Papal Legate, to Ralph Neville, Vice-Chancellor, May 16, 1219.

- II. Letter of Hubert de Burgh to Eustace of Fauconberg, Treasurer, and Ralph Neville, Dean of Lichfield, May 6, 1220.
  - III. Honorius III declares Henry III to be of age in 1223, according to Roger of Wendover.
  - IV. A letter of Gregory IX to the magnates of England, April 13, 1227, declaring Henry III to be of age.
  - V. Complaints of Falkes de Breaute made before the lord Pope, given in the chronicle of Walter of Coventry, under the year 1225.
  - VI. Pope Honorius III suspends the operation of letters which he had issued to Ranulf of Chester and others, ordering the surrender of castles. Dated November 20, 1223.
  - VII. Henry declares himself to be fully of age, 1227, according to Roger of Wendover.
  - VIII. Extracts from the defence of Hubert de Burgh in 1239.
- I. Letter of Pandulf, Papal Legate, to Ralph Neville, Vice-Chancellor, May 16, 1219.

Pandulf, by the grace of God bishop elect of Norwich, Legate of the apostolic see to his dear friend, Ralph Neville, vice-chancellor, greeting and sincere love;

Because we have special trust in your loyalty, we urge you frequently and confidently to forward the business of the church and of the king. This is what we command to your devotion; that you will be zealous in the business of the exchequer, and that you will inform us by your letters what happens affecting it. But if it happens that you take a holiday at this time, and that there is nothing to be done in the exchequer, and you wish to make pilgrimage to the blessed martyr, I am agreeable. But you should return without delay and you should leave the

seal of the lord king under your seal, in the House of the Templars, until you return.

Given at Gloucester, 17 kalends June.

—From *Royal and other Historical Letters Illustrative of the Reign of Henry III*, ed. by W. W. Shirley (R.S., London, 1862), I, 119-20.

**II.** Letter of Hubert de Burgh to Eustace of Fauconberg, Treasurer, and Ralph Neville, Dean of Lichfield, May 6, 1220.

Hubert de Burgh, justiciar of England, to his dear friends Eustace of Fauconberg, treasurer of the lord king, and Ralph Neville, dean of Lichfield, greeting.

This is to tell you that today, Wednesday on the Vigil of the Ascension (May 6), the lord Legate sent two of his clerks to me, master Randulf of Harpele and master Harding, by whom he sent word that he will be moved entirely by our counsel, to the honour of God and the profit of the lord king; and that he very greatly hopes to talk to us, so that he is not leaving Cirencester until the above messengers return to him. We, however, have sent back to him that if he will agree to your counsels, we will fully accept his own to the honour of God and the profit of the lord king and of the realm. But you should know that immediately after the present feast of the Ascension we shall, if God grants it, go towards London. The above messengers also said to us that the Legate would hurry towards Windsor to discuss with us. Farewell.

—From *Royal Letters of Henry III*, 116.

**III.** Honorius III declares Henry III to be of age in 1223, according to Roger of Wendover.

That year there arose a great complaint from the magnates of England, against Hubert de Burgh the justiciar. And they tried to disturb the peace of the realm; for they said to each other that he was exciting the mind of the king against them and also that he was not ruling the realm with just laws. Moreover there was added, to stir up greater hatred, the arrival of messengers of the

king, whom he had sent to Rome and who brought back a bull of the lord Pope addressed to the archbishops of England and their suffragans. It contained the following, namely that the lord Pope had adjudged the king of England to be of full age, so that in future he might ordain the business of the kingdom<sup>1</sup> principally by the counsel of his own servants.<sup>2</sup> The lord Pope also signified to those prelates who were to carry out his orders that they should, by apostolic authority, declare to those earls barons knights and all others who had the custody of castles honours and towns, belonging to the lord king, that when they had seen the letters, they should immediately surrender those custodies to the king. Those who refused, they should force by ecclesiastical censure into giving satisfaction. Whereupon, the greater part of the earls and barons, whose hearts were filled with greed, were impatient at such commands. They designed to stir up war, and met together. A conspiracy was kindled and without bellows, and they used the above opportunity as a pretext for disturbing the peace of the realm. They refrained from surrendering to the king the custodies already mentioned, on the admonition of the archbishops and bishops, preferring to take up arms rather than to satisfy the king in this matter.

—From Roger of Wendover, *Flores Historiarum*, ed. by H. G. Hewlett (R.S., 1887), II, 273; cf. the edition by H. O. Coxe (English Historical Society, London, 1841-44).

#### IV. A letter of Gregory IX to the magnates of England, April 13, 1227, declaring Henry III to be of age.

Gregory, bishop, servant of the servants of God, to his dear sons, the noblemen, earls and barons of England, and to all the faithful subjects of our dearest in Christ, Henry, the illustrious king of England, greeting and apostolic benediction.

<sup>1</sup> *Negotia regni.*

<sup>2</sup> *Domestici.*

Articles<sup>1</sup> for their protection have provided, for the counselling of those legally standing in the years of minority, lest these minors should be able to mishandle their affairs, and so that they might be well looked after, that they should be under tutors and guardians during a certain period. However, according to those articles, that which is known to have been introduced for their benefit ought not to be turned to their injury. And it would do so if those who are adult, in whom prudence makes good the lack of age, should not be permitted to dispose profitably and discreetly of their affairs. Then, immediately, that which had been established for their advantage would turn to their loss, and that which should have been good for them would be found to be bad.

Although, therefore, the youth of our very dear son in Christ, the illustrious Henry king of England shows in his years; since, as we have understood, and as we rejoice to hear, he already has assumed a manly spirit and has gained ground in age and wisdom; and since that which is lacking to him in the number of his years might seem to be made up for by the excellence of his discretion; therefore he is not, in future to be forbidden from ordering, profitably and wisely, the kingdom and the business of the kingdom.

Therefore we charge you, commanding your devotion by apostolic script, that when we grant by our mandatory letters to our venerable brother the bishop of Winchester, and the noblemen, the justiciar of England and William Brewer, that in future [the king shall have] the free and quiet disposition of his realm, you shall thenceforth be humbly and devotedly intendant on him, showing him the reverence and honour which faithful subjects ought to show to their lord. And you shall go against those who shall presume to oppose, and so faithfully and firmly assist him, that he may, not undeservedly, be constrained

<sup>1</sup> *Sanctiones.*

to affection for you. However if you do otherwise, which we do not believe to be tolerable, you can fear, not undeservedly, sentence of excommunication against you.

Given at the Lateran, the Ides of April, in the first year of our pontificate.

—From Rymer's *Foedera*, I, 190; printed from The Red Book of the Exchequer, fol. 171.

V. Complaints of Falkes de Breauté made before the lord Pope, given in the chronicle of Walter of Coventry, under the year 1225.

Falkes, having journeyed to Rome, placed the following complaint before the lord Pope and the cardinals. "After the time of the war in England, the custody of castles and of other things pertaining to the lord king had been given<sup>1</sup> to the care of those barons who seemed suitable. The justiciar, as is the custom, together with the lord bishop of Winchester, controlled the person of the king and the seal. The bishop had been given the person of the king to govern. But when the said bishop had set off to go on a pilgrimage to St. James [of Compostella] the justiciar with his accomplices brought it about that when the king held his court at Winchester [in 1221, Peter Mauley was arrested and compelled to resign his castles. When the bishop of Winchester returned from Spain, he found that the king leaned entirely on the justiciar.] Afterwards, a command had proceeded from the apostolic see to the effect that castles, bailiwicks etc. which belong to the king, should be surrendered by all who hold them, with a clause added saying that the king himself had now been made of adult status and could not be compelled to have a tutor or guardian if unwilling except *ad causam*. [Walter de Lacy and Ralph Musard were also compelled to surrender their castles. The Earls of Gloucester and Aumale tried to get an interview with the king to complain of the justiciar. Henry fled to

<sup>1</sup> *Fuerint deputata = fuerunt deputata?*

Gloucester, November 1223] whence arose discord between the said barons and the justiciar, who, on account of the above causes and also of many others, seemed to be wholly distrusted in the rule of the king and of the kingdom.

In order to allay this discord, the Archbishop of Canterbury and some of his bishops pretended to interpose their factions,<sup>2</sup> and these afterwards nourished the fire and fomentation of dissension from both sides. At length, on St. Nicholas' day, they fixed up something like a truce between the parties until the octave of St. Hilary; they believed, as it seemed, that all the material of discord and the decision regarding that material could be removed, with prudent discussion.<sup>3</sup> Meanwhile, however, whilst this was pending, when the king, at Northampton, had celebrated the feast of Christmas as is the custom, it was arranged by the counsel of the archbishop and of the justiciar, that both the Earl of Chester and the others mentioned above, should be called to the *curia regis*, as if to treat (*tractaturi*) with the king concerning the business of the king and of the realm.<sup>4</sup> When they came, at the command of the prince, as was proper, and had been admitted into the presence of the king and of the archbishop and of certain bishops who were in attendance at that time, certain apostolic letters were shown to them, which commanded that there should be a restitution to the lord king of the things which were his. When these had been read through, the lord king following the counsel of the justiciar and his supporters, immediately demanded from the Earl of Chester and the rest whom he had summoned that they should surrender their castles to him without delay. Although the latter hesitated

<sup>2</sup> *Interponere partes suas.*

<sup>3</sup> *Totam ipsi discordiae materiam, et ejusdem materiae decisionem, provida ut videbatur deliberatione censuerunt differri.*

<sup>4</sup> *De ipsis regis et regni negotiis tractaturi.* This is an important early use of the terminology of the writs of summons to parliament.

for some time, as to whether they should make the surrender at the request of the king, or whether they should seek advice on the matter at the apostolic see, in the end, they obeyed the voice and order of the archbishop, who threatened to pronounce sentence of excommunication against them unless they surrendered their castles without complaint and tumult, and unless they freely and peacefully surrendered all the castles which they had kept long and faithfully for the king. They nevertheless protested that just as their surrender was made openly on their part, there should also be an open surrender similarly by the justiciar and his supporters, lest the condition of the justiciar and his supporters be made unequal to that of those who were striving against the justiciar for the honour of the king.

—From the *Memorale fratris Walteri de Coventria*,  
ed. by W. Stubbs (R.S., 1873), II, 259-62.

VI. Pope Honorius III suspends the operation of letters which he had issued to Ranulf of Chester and others, ordering the surrender of castles. Dated November 20, 1223.

It was humbly prayed on your behalf, when you had heard of the issue of certain letters by us, by which we ordered our venerable brother the bishop of Winchester, and our dear sons the noblemen Ranulf earl of Chester, Hubert de Burgh justiciar of England and Falkes de Breaute to be compelled to surrender into your hands their bailiwicks and royal castles, that we would decree those letters to be null and void, lest any occasion for strife arise from them. For these men, as faithful subjects, are prepared, with a consideration of the consequences, to surrender them at an opportune time. And there might not be any others to whom the bailiwicks etc. might be committed more securely.

But because those letters had been asked for on your behalf and conceded by us for your sake, we—lest any

lightness should seem to have come into the proceedings —do not agree to revoke the letters except that, if it does not please you to proceed by authority of the letters, we very strictly forbid that any procedure be taken, in any degree, by virtue of them. And if anything, by any chance, is attempted through the letters, against the above-mentioned people, against your will, we decree that it shall have no validity whatsoever.

Given at the Lateran, 12 kalends of December, in the eighth year of our pontificate.

—From *Royal Letters of Henry III*, I, 539.

VII. Henry declares himself to be fully of age, 1227, according to Roger of Wendover.

At that time, the king of the English called a council together at Oxford in the month of February, and proclaimed before everybody, that he was legally of age, so that in future, freed from guardianship, he himself would chiefly order the royal business.<sup>1</sup> Thus, he who first had William Marshal as tutor and *rector*, whilst William was alive, and afterwards had Peter bishop of Winchester, now excused himself from the counsel and guardianship<sup>2</sup> of the bishop and his supporters, who had formerly been like instructors<sup>3</sup> to the king. Now he removed all of them from his court and household.<sup>4</sup> And in the same council the king, in consequence, made all charters, from every province of the realm of England, concerning the liberties of the forest, to be cancelled and annulled, after they had already been used for two years throughout the whole realm. He put forward this pretext, namely that those charters had been conceded and those liberties written out and sealed whilst he himself was under guardianship [as a minor] and had no power either of his body or of his

<sup>1</sup> *Regia negotia.*

<sup>2</sup> *De consilio et gubernatione.*

<sup>3</sup> *Paedagogi.*

<sup>4</sup> *Cohabitatione.*

seal. Thus that which had been usurped [from him] without cause, ought to lack [legal] force.

A great discontent arose in the council on this matter, and all adjudged the justiciar to be the author of this confusion. For step by step, he had come close to the king in such great intimacy, that all the counsellors of the king except himself were held of no account. Then, however, it was announced to men of the church and others who wished to enjoy their liberties that they should renew their charters under the new seal of the king, in the knowledge that the king reckoned their old charters to be of no weight. For this renewal, payment was charged, not according to the resources of each individual, but each was forced to pay whatever the justiciar assessed.

—From Roger of Wendover, *Flores Historiarum*, II, 318.

### VIII. Extracts from the defence of Hubert de Burgh in 1239.

On the death of king John in the time of war, the Marshal was made governor of the king and of the realm, by the counsel of Gualo then Legate, and of the magnates then gathered round the lord king. When peace was re-established, the Marshal remained governor of the king and of the kingdom, and Hubert remained justiciar, with nobody making any opposition. After the death of the Marshal, he remained justiciar, with no challenge from any quarter, by the counsel of the lord Gualo then Legate, of Stephen Archbishop of Canterbury and of the bishops and magnates of the land. And the lord Pope always wrote to him as justiciar, and so he was regarded by the church and by the kingdom — always as justiciar made by lord John the king. . . .

[In reply to the charge that he had obtained letters declaring the king of age, in order to obtain the lands of Henry of Essex and others, he said:] that he had not sent the messengers to Rome, but that the bishop of Winchester sent W. of St. Albans to Rome on that busi-

ness, more to do harm to the said Hubert than to do him good, so that he and others should surrender their custodies, as was done at Northampton. Afterwards it was provided by the common counsel of the archbishops and bishops that the lord king should have his seal and that his letters should run in the realm, so that he should be held in greater fear and have greater authority in the realm. Afterwards the dignity of majority was asked for, from Pope Honorius, at the suggestion of the archbishops, bishops, earls and barons. For they suggested to the Pope that Henry's prudence and discretion made up for his age, as is contained in the grant of privilege by Pope Honorius addressed to the earls and barons, which begins as follows; [Hubert then repeats the words of the letter of Gregory IX translated above, from "although, therefore the youth of . . . Henry" down to "free and quiet disposition of his realm."]

And to the Earl of Chester he wrote in this manner: "By apostolic script we command and exhort you, that in future you give up to him the disposition of his realm, and that you resign to him the lands and castles which you hold by name of custody, without any difficulty, and that you will procure the resigning of the same from others." The Pope wrote in the same terms to the bishop of Winchester. But to the chancellor he wrote as follows: "By apostolic script we command that you, having the seal of the king, and the custody of the same, will use it according to his pleasure and will be intendant upon and obedient to, him himself. That you will cause no letters to be sealed in future except at his wish. . . ."

—From Matt. Paris, *Additamenta, in Chron. Maj.*, ed. by H. R. Luard (R.S., 1882), VI, 69-70.

## CHAPTER II

### The Crisis of 1233-34

#### (a) *Some Recent Works*

- GALBRAITH, V. H., *Roger of Wendover and Matthew Paris* (Glasgow, 1944).
- MILLS, Miss M., "The Reforms of the Exchequer 1232-42" (*Transactions of the Royal Historical Society*, IVth Series, X, 1927, 111-33).
- POWICKE, F. M., "The Murder of Henry Clement and the Pirates of Lundy Island" (*History*, XXV, March, 1941, 285-310).
- STEEL, A., "The Place of the King's Household in English Constitutional History" (*History*, XV, Jan., 1931, 289-95).
- TREHARNE, R. F., *The Baronial Plan of Reform* (Manchester, 1932).
- TOUT, T. F., *Chapters in Medieval Administrative History*, I, 214-20.
- WILKINSON, B., "The Council and the Crisis of 1233-4" (*Bulletin of the John Rylands Library*, XXVII, June, 1943, 384-93).

#### (b) *Introduction to the Documents*

THERE is only one important source of information for the first great political crisis which occurred during Henry III's personal rule, and that is the story of Roger of Wendover, copied, with little alteration, by Matthew Paris. The crisis is important to the constitutional historian. It had a profound effect on Henry's government; indeed, Professor Powicke has recently gone so far as to say that it was probably more important than the

movement led later by Simon de Montfort. It reveals the nature of the government which Henry set up in 1232 under the inspiration of Peter des Roches and the character and aims of the opposition which this government evoked. It is particularly important to all students of this period because of the challenge which Roger's narrative offers to the critical historian. This is the only important source of information; but it has some very questionable features. The result is that, since it cannot be checked by reference to other sources, it must be criticized mainly from internal evidence and on the basis of the probabilities of the situation. The result is naturally somewhat inconclusive, but that is very frequently the outcome of historical investigations. It is good for a serious student to get accustomed to the uncertainties of history, and occasionally to attempt an evaluation of a document largely from internal evidence alone.

The crisis of 1234 began with opposition to the king's policy by certain magnates, led by Richard, Earl of Pembroke, Marshal of England. Richard was the son of the famous loyalist who as Marshal and *rector regis et regni* had sustained the fortunes of the monarchy during the early Minority of Henry III. He and his followers opposed the councillors who, led by Peter des Roches, had surrounded Henry after the fall of Hubert de Burgh. The crisis reached its climax with the death of Richard in Ireland at the hands of loyal Irish magnates on April 16, 1234, as the result, it was believed, of a letter of "betrayal" sent by the council in England to the Irish lords. The story of this letter, for which we depend entirely, or almost entirely, on Roger of Wendover, had better be given in something like Roger's own words. Peter des Roches and his son Peter de Rivaux and others of the king's council, he says, failing to destroy Richard by arms, composed and sent to Ireland letters of unheard of treachery to achieve their aims. The king was entirely

ignorant of the contents of these letters, which the councillors sealed with their own seals, eleven in number; but nevertheless they compelled him to affix his seal. A charter of this betrayal was also sent to the magnates of Ireland. Roger gives the contents of this charter word for word. It informed the Irish magnates that the Earl Marshal had been outlawed. If he went to Ireland, they were to capture him alive, or dead; and if they did this they would be rewarded with the Earl's Irish possessions. "And we all," the charter concluded, "by the counsel of whom the king and the kingdom are ruled, constitute ourselves pledges that the king will faithfully keep the promise that he has made to you in the matter."

After the death of the Earl, a great reconciliation was held at Gloucester in May, 1234, between Henry and the opposition. At this great council, Roger narrates, Edmund, Archbishop of Canterbury caused to be read a copy of letters of betrayal of Richard, the Earl Marshal, which had been sent by the councillors of the king to the magnates of Ireland; whereupon the king himself and all others who heard were extremely sad and driven so far as to the shedding of tears. Henry then confessed that he had been compelled by his councillors to seal letters whose contents he did not know. After this confession the Archbishop replied, "Search your conscience, king, because all those who caused those letters to be sent and who knew of that betrayal, were guilty of the death of the Marshal, just as if they had slain him with their own hands." Then Henry dismissed his old advisers, thus thoroughly discredited in the eyes of the nation, and appointed new ones in their place.

According to this story, in 1234 Henry was a tool in the hands of his advisers. They made decisions of great moment without his knowledge. They boasted that both king and kingdom were ruled by their counsel. They went beyond their boasting by exercising a power of compul-

sion over the use of the Great Seal, a supreme violation of the sovereignty of the king. The guilt of Henry's advisers was established at the meeting at Gloucester by extraordinary methods, but the councillors were allowed to go practically unpunished for their crimes.

So much seems certain. The truth of the story of betrayal which was thus made the reason for Henry's change of heart towards his advisers, must remain a matter of debate, in spite of the very great authority of Roger of Wendover and Matthew Paris. One reason for this lies in the many ambiguities in their story of the compilation of the letters of betrayal and of the procedure at Gloucester. Both letters of betrayal and a charter of betrayal were sent to Ireland, but we are not told whether or not Henry was compelled to put his seal to both. Nor are we told why the letters of the councillors were necessary if a royal charter was sent. The proceedings at Gloucester were even more questionable. Edmund did not say that Henry's seal was on the letters of the council;<sup>1</sup> Henry, for his part, professed not to know what he had sealed. Yet everybody assumed that the letter which Edmund had just read was the letter which Henry had been compelled to seal. Again, the king himself was driven to tears by the letters of the council; but there was nothing in those letters which was at variance with his own policy regarding Earl Richard. In the third place, there was such a readiness to believe the worst about the council, as a basis of reconciliation between king and magnates, that the details of the council's actions seem never to have received any real scrutiny or to have been the subject of questions or doubts. The councillors were never formally indicted, in this council, for any illegal use of the Great or the Privy Seal. They were never punished

<sup>1</sup> Even though the Archbishop only had copies, it seems almost certain that he must have known how the original letters had been sealed. Sealing was the supreme means of authentication.

for this very serious offence, even though, according to Professor Powicke, the king's anger was "unbounded." Finally, it is extremely likely that, whatever the truth about the councillors' letters, Henry had issued perfectly straightforward authorizations, most probably under his Great Seal, for the Irish lords to take action against the Earl Marshal, a declared enemy of the king. The death of the Earl was the logical outcome of the king's policy plus an element of an unlucky chance. In view of all these considerations, it seems wise to conclude that the implications clearly intended to be conveyed by the famous scene of reconciliation at Gloucester may possibly be a good deal removed from the truth.

This conclusion is strengthened by the fact that the narrative of Wendover is not as consistent as it appears at first sight. The letter quoted by Edmund Rich at Gloucester, according to Roger's own story, was a letter of the council. This was the fatal missive. Yet Roger, in describing the events which had led to the Earl Marshal's death, in an earlier part of his narrative, quoted, not from this letter but from a charter which, he said, was "also" sent. Yet the wording of the document he cites is the wording not of a charter but of a letter from the council, with no trace in it of having been sealed by the king. It is very doubtful if the royal seal attached to such a document would have done more than arouse the suspicions of the Irish lords. In any case, Roger says, they sent back to England requesting a confirmation in a charter of the king. It seems likely, if Henry actually was, as he said he was, compelled to affix his seal to letters whose contents he did not know, that these letters were the charters of confirmation rather than the letters of the council.

All these things make Roger of Wendover's story of the treachery of Henry III's councillors a matter of real doubt in spite of the very good reputation of this writer

which had already been defended above. What the truth of the matter really was, and how Roger came to write his story, are difficult problems which perhaps lie outside the scope of this inquiry.<sup>2</sup> There does not seem to be much doubt that there was a letter from the council. For that, we have the testimony of Archbishop Edmund Rich; and it seems reasonable to believe that the letter which the Archbishop read out at Gloucester and the one from which Roger quoted in his chronicle were the same. This letter from the council may have been sealed with eleven seals, by eleven councillors. On the other hand, we cannot believe, on the evidence which we possess, that it was also sealed with the king's seal. We can hardly believe that Henry was compelled to affix his seal to any document. The question of whether or not he knew the contents of this particular document cannot be answered. There were probably many communications by his counsellors, and even under his Great Seal, of which he was not aware. It is likely that Roger knew all about the scene at Gloucester when he wrote the earlier passage in his chronicle describing the death of the Earl Marshal. The ambiguities in his narrative seem to come partly from his attempt to make the two parts of his narrative entirely complementary to each other. There seems to be good reason to believe that they were also due in no small measure to a disposition on the part of everybody, from the Archbishop downwards, to shield Henry, to blame his advisers, and to provide as good a basis as possible for the reconciliation of 1234.

Roger's story, as far as we can arrive at the truth behind it, seems to offer the following important points of interest to the constitutional historian. The dismissal of Hubert de Burgh in 1232 was followed by a

<sup>2</sup> The general problem is discussed at length by F. M. Powicke, *King Henry III, 129-47*. His conclusion is that Henry's defence of his actions at Gloucester was a poor, though probably a true, defence.

period in which Henry III depended almost exclusively on the advice of Peter des Roches and a few of his ministerial colleagues, who formed an exclusive council. This was in line with the policy of Henry during the ascendancy of Hubert de Burgh and caused the same sort of opposition. Henry took advice from this council not only on his own personal problems, but also, as Roger makes clear, on matters of vital concern to the nation. Thus, Roger says, "it happened that all the business of the kingdom was ordered by their counsel and will." This deep question of counsel and advice, as between king and "nation," expressed particularly in the new institution of the "Privy" Council, provided the underlying causes of the crisis of 1234.

The famous, or infamous, letter of the council provides us with important information about this body, the first "Privy" Council in English history about whose actions and composition we have such precise information. Its personnel was apparently fairly closely defined and exclusive. It is no longer possible, perhaps, to say with regard to it that there were counsellors, but there was no council. But the council, though a definite body, did not yet possess a seal of its own; and it does not appear in this crisis as having executive functions. The pretensions of the councillors in the letter of "betrayal" were certainly extremely high. When they claimed that it was by their advice that king and kingdom were ruled, they were sharply challenging public opinion in England on a double count; but even they did not claim any definite executive powers. In any case there can be little doubt that their arrogant assumption of power and influence deeply shocked public opinion. It shows how far-reaching were the effects of the growth of bureaucracy in the thirteenth century, on the system of government and the position of the king.

The bishops, on whom Henry had leaned so heavily at

different times since 1216, had earlier told the king that, since scarcely any great business was done in the realm by Henry's seal or command, but only by the seal or command of Peter de Rivaux, the country did not seem to have Henry for king; that in their opinion, the ruler should deal with his kingdom by the counsel of his faithful men. The outlawry of Richard of Pembroke brought this opposition to a climax, and there is no doubt that after only seven years of his policy of personal rule, Henry was faced with an opposition nearly as comprehensive as that which had faced his father in 1214. His surrender at Gloucester was due to overwhelming necessity, not in the least, in all probability, to any real change of heart.

In this surrender, because of the lack of any clear plan by the opposition, because of his youth and the readiness of the nation to believe him, because of the general desire to avoid deep friction, and perhaps, finally, because of the goodwill of Edmund Rich, the Archbishop of Canterbury, Henry was not driven to make any important surrender of his rights or of his claims. He admitted that his councillors were wicked. He blamed them for the death of the Marshal. He dismissed and threatened to punish them, and he appointed councillors who were acceptable to the barons. But he made no concessions of principle on the points at issue between him and his subjects. The way in which the first crisis of Henry's reign was solved was really a bad omen for the future. The deep problems raised by the circumstances of the early years of his reign, together with his own policy, created differences between him and his subjects which could not be composed by facile reconciliations and which did, indeed, continue unsolved until they culminated in the bitter struggle of 1258-65.

In all this, the famous letter of betrayal which was so prominent at Gloucester, was not really very important. Its production added little to the crisis which had already

passed its peak before the assembly at Gloucester came together. It has, indeed, been suggested that one reason for the constitutional importance of the letter is that it had been sealed with the Privy Seal of the king, not the Great Seal, and that this introduced a new element into the constitutional problem of the period. That element was the use of this seal of the household for the political purpose of supporting the royal prerogative against the baronial opposition. The Privy Seal, it has been thought, was valuable for this purpose because it was still entirely under the control of the king and the courtiers, whilst the Great Seal was more open to the influence of the barons, and might frequently be in the hands of a bishop whose sympathies lay rather with the barons than with the king. But this theory must be considered as still doubtful. It is completely uncertain whether, if any royal seal was affixed to the letter of the council, it was the Great or the Privy Seal. If it was the Privy Seal, it is uncertain whether we should draw far-reaching conclusions from its use. No contemporary had anything to say about this particular problem. The real centre of the crisis of 1234 was not the Privy Seal or the king's household, but the great and vital institution of the council. The crisis throws a great deal of incidental light on the council of the early thirteenth-century and on the policy and pretensions of Peter des Roches. But it does not clearly illustrate the emergence of any new element in the constitutional problem which had existed since the accession of Henry III.

The outcome of the crisis of 1234 should perhaps be considered further, for it has recently been prominently discussed. The crisis of 1233-34, Professor Powicke has concluded,<sup>3</sup> was probably more important than the better known and more prolonged assertion of baronial opinion

<sup>3</sup> *King Henry III*, 143-4. The sentences which follow are taken directly from this work.

a quarter of a century later under the leadership of Simon de Montfort and the Earl of Gloucester. The very fact, he urges, that Earl Richard and his friends were defending a cause and not aiming at power ought to give this crisis of 1234 that place in history which the revolutionary action of the Earl of Leicester has appropriated. Earl Richard and the bishops who came to his support, Professor Powicke suggests, were seeking to maintain the conception of kingship which was implicit in the Charter of Liberties and was vigorously upheld in the Schools and in all the numerous treatises on the rights and duties of a king. The Earl insisted upon his right to criticize the king's choice of ministers, and to be tried by his peers. The Archbishop and bishops preached the duty of the king to rule with the advice of his more important vassals. Hubert de Burgh and his rescuers appealed, as outlaws who had not been convicted, to the law of the land. Gilbert Basset, the Bishop of Carlisle, and many more protested against illegal disseisin of their tenements. All were united, Professor Powicke concludes, in detestation of a system which placed children under age and widows of the king's tenants at the mercy of a single man. These men were not theorists; they were ordinary loyalists, trained in the school of the great Marshal and advised by the wisest men in the country. And they were successful. This fight for the Charters was crucial and it was conclusive. In these events Henry learned a lesson which he never forgot. He never strayed far outside the limits imposed upon him by the Charters which he had granted and was sworn to observe.

Professor Powicke has done a great service to historians by his revaluation of this crisis. Whether or not the crisis was really more important than that of 1258-65 must probably, however, remain an open question, at least until it has been more widely discussed. The weakness of the opposition to Henry in 1234, unlike that of 1258, was

that it was only a protest. Professor Powicke rightly observes that the opposition to Henry strove to assert a conception of kingship implicit in Magna Carta; but the issues raised by the king's policy in 1233 had already gone beyond those covered by the royal concessions of 1215. Henry III's policy never had been to reject or openly violate the Charters. His restoration of the monarchy embraced and transcended the concession of his father. It was dangerous to his subjects precisely because it accepted the letter of the constitution as it existed after 1215 (with slight exceptions), and fell back on old and deep political traditions which supported strong monarchical rule. The opposition of 1233-34, despite all its service to the country, did not know how to deal with this royalist restoration. It was not really constructive. There had, indeed, been little time in which to evolve a clear-cut attitude on the part of the magnates towards the complex constitutional problems which confronted the nation after 1216. Thus the opposition did not force any concession of principle from the king. There is no real evidence, in spite of his public repudiation of Peter des Roches,<sup>4</sup> that Henry underwent any true conversion, as a result of his experiences in 1234. Within a few years — even, perhaps, a few months — the fundamentals of his policy were revived. In 1237, 1238, 1242, and 1244, the barons were anxiously discussing methods by which this policy could successfully be met. That is why I ventured to conclude, in the Introduction to this volume, that their opposition in 1233-34 did not really succeed. Success or failure is, indeed, always a relative matter. The problem of whether or not the opposition of 1233-34 succeeded is, in itself, not important. What is important are two facts on which there may possibly be found agreement. On the one hand the magnates who supported Earl Richard triumphantly reasserted, in

<sup>4</sup> See Powicke, *King Henry III*, 145.

general terms, the principles enshrined in *Magna Carta*. On the other hand they failed, as they almost had to fail at this early period, to find a constructive solution to the newer constitutional problems of the age.

(c) *Documents*

- I. The dismissal of Hubert de Burgh in 1232, according to Roger of Wendover and Matthew Paris.
- II. The betrayal of the Earl Marshal in 1234, according to Roger of Wendover.
- I. The dismissal of Hubert de Burgh in 1232, according to Roger of Wendover and Matthew Paris.

At that time the king removed Hubert de Burgh proto-justiciar of the realm, from his office, by the counsel of Peter, Bishop of Winchester, although,<sup>1</sup> as it is said, Hubert had a charter of the king granting him his office in perpetuity;<sup>1</sup> and Stephen de Segrave, who was a knight only in name, was put in his place on the fourth kalends of August . . .

The king . . . held his court at Christmas, in Worcester. There, acting with the counsel of Peter, Bishop of Winchester, he removed all his "natural" ministers from their offices and replaced them in their ministries by Poitevin foreigners. And he expelled also William of Rodune, a knight, who was acting in the *Curia Regis* as the deputy of Richard the great Marshal, a thing which Richard took very ill. The king also, by the same advice, expelled Walter, Bishop of Carlisle from his position as treasurer, and took a hundred pounds worth of cash from him; he also insultingly deprived him of certain custodies which he had confirmed to him for life by his charter. Indeed, he dismissed all his councillors, as well bishops as earls and barons and everybody of the nobility in his realm, so precipitately that he trusted in nobody except the above bishop and his beloved<sup>2</sup> Peter de Rivaux. Thus it was

<sup>1</sup> Added by Matthew.

<sup>2</sup> Roger says "his son Peter."

brought about that he dismissed the keepers of castles throughout all England and commended all things to the custody of the same Peter. Then Peter, Bishop of Winchester drew into fellowship with him, so that he might more freely obtain the king's favour, Stephen Segrave, a pliant man and Robert Passelawe who kept the king's treasury under Peter de Rivaux; and so it happened that all the business of the kingdom<sup>3</sup> was ordered by their counsel and will.

The king also retained in his obedience the Bretons and Poitevins, whom he had invited from overseas; and they came, needy and greedily covetous of gain, to the number of two thousand, with arms and horses, knights and men-at-arms. He placed them in the custody of castles in different parts of the realm, and they oppressed the "national" and nobly-born men of England with all their might, calling them traitors and even accusing them of treachery before the king. The guileless king, trusting their lies, handed to them the custody of earldoms and baronies and the wardship of boys of the nobility and girls of the highest rank. . . . And he gave to them the custody of his treasury and the laws and justice of the country. What shall I add? Judgments were given into the hands of the unjust; laws into the hands of outlaws; peace to those who are full of discord; justice to the unlawful. And when the magnates of the kingdom stated their case before the king, on behalf of the kingdom,<sup>4</sup> regarding the oppressions which these men had inflicted, there was nobody to give them justice. The same Bishop Peter also accused certain bishops of England before the king, so that he would avoid them as if they were public enemies.

—From Matt. Paris, *Chron. Maj.*, III, 220; Roger of Wendover, *Flores Historiarum*, ed. by H. G. Hewlett (R.S., 1889), III, 31-2; 47-8.

<sup>3</sup> *Negotia regni.*

<sup>4</sup> *Nobiles in regno et de regno*; an example of the way the magnates had come to regard themselves as the *universitas regni*, speaking on behalf of the *regnum*.

## II. The betrayal of the Earl Marshal in 1234, according to Roger of Wendover.

During these days, Peter Bishop of Winchester, and his son Peter de Rivaux, and other wicked counsellors of the king, saw themselves everywhere beaten by the Earl Marshal, and grieved for their manors which were irretrievably destroyed by fire. They devised a trap, to overcome by treachery him whom they could not overcome by arms. Because they had, in addition to other set-backs when they had been frustrated in their desires, seen a numberless crowd of Poitevins killed on the borders of Wales, they composed letters of unheard of treachery. Although [*cum*] the king was entirely ignorant of the tenor of the letters, they compelled him to affix his seal, to which they also added their own seals, eleven in number, and they sent that cruel writing to Ireland. A charter of this betrayal was also sent to the magnates of Ireland . . . and to other men sworn to the said Marshal, but faithless; which charter contained, in part, the iniquity which follows. Firstly, the aforesaid counsellors signified to the above magnates that Richard, former Marshal of the king of England had been outlawed [*postscriptus*] from the realm of England and from other lands of that realm, his manors and houses destroyed by fire, his parks and orchards cut down, his lakes and fish-ponds destroyed and, most important of all, he had been adjudged to be perpetually deprived of his paternal inheritance. And so that the Earl should be deprived of all his possessions by this order, the king did not fail to go so far, but persisted in the malice which he had conceived against him. "We signify to you therefore" [Roger quotes] "as faithful and sworn subjects of the lord king, that, if he [the Earl] should come to Ireland, you will make every effort [*studeatis*] to bring him in person to the king, whether you capture him living or dead. And if you take care to do this, the lord king will concede to you all his

heritage and possessions in the land of Ireland, to be divided between you and to possess by hereditary right. And we all, by the counsel of whom the king and the kingdom are ruled, constitute ourselves pledges that the king will faithfully keep the promise he has made to you in the matter, if you bring about what is touched on above. Farewell [*Valete*].

That the magnates of Ireland agreed with [the offer of] the king's counsellors.

When, therefore, the aforesaid magnates of Ireland had heard the tenor of the letter(s), desire conquered the heart of each. They conspired together and secretly sent messengers back with letters to the aforesaid counsellors of the king, signifying to them in common, under privy [*secretum*] seal, that if the promise contained in the letter were confirmed to them by the king's charter, they would try to bring about the matter spoken of. Then those counsellors frequently conceded to the magnates, by the king's charter, all the rights of the Marshal in Ireland, to be divided amongst themselves, setting forth the locality, possessions and rights of each one. And when at length this damnable writing had reached the most wicked traitors in Ireland, they straightway took a mutual oath and made a confederacy that, when they saw an opportunity, they would do that detestable thing. And gradually gathering together to slay the innocent, they collected a numerous army, attacked the lands of the Earl Marshal, seized several of his castles and divided the spoils and booty amongst them . . .

. . . [Meanwhile Edmund, Archbishop Elect of Canterbury and many bishops, complained to the king, especially declaring] . . .

Lord king, we say to you, as your faithful subjects in the Lord, that the counsel which you now receive, namely, of Peter Bishop of Winchester and Peter de Rivaux, is not sane or safe, but cruel and dangerous to

you and to the realm of England. Firstly, because they hate the English people, calling them traitors and causing everybody so to be called, and turning your heart from your people and the heart of your people from you, as appears in the case of the Marshal, who is one of the best men in your land; but these people pervert all his sayings and his deeds by the evil lies which they tell about him. . . . Also, we tell you this in the faith which we owe you, that your council is not for peace, but for the disturbing of the land. . . . Also, scarcely any great business is done in the realm by your seal or command, without the seal or command of Peter de Rivaux, whence it appears that they do not have you for king. . . . But we say these things to you in good faith, and we counsel you before God, and beg and advise you, that you will remove such counsel [or such a council] from you, and, as is the custom in other realms, will deal with your kingdom by your faithful men, those who are sworn of your realm.

. . .<sup>1</sup> [Shortly afterwards the king, in a *colloquium* at the end of March, dismissed the two Peters, sent the Archbishop of Canterbury and the Bishops of Chester and Rochester to treat for peace with Llewellyn of Wales and the Earl Marshal, and called back to his obedience the "natural" men of his kingdom, placing himself under the counsel of the archbishop and the bishops. Meanwhile the Earl Marshal was slain. News of the death was brought to Henry in England; whereupon the king, to the admiration of all who were present, was overcome and burst into tears. The king summoned the remaining enemies, including Hubert de Burgh and Gilbert Bassett to Gloucester, on the 4th kalends of June, to receive complete forgiveness. Along with them came Gilbert, brother of Richard the Earl Marshal and he received his brother's

<sup>1</sup> That is, will dispose of the *negotia regni* by discussion and agreement with the *universitas regni*, or at least, through the medium of an inner council of men acceptable to the *universitas*.

estates; and Hubert de Burgh, Gilbert Basset and Richard Siward were admitted "amongst members of the household and intimate counsellors."]

That the king demanded a reckoning with Peter de Rivaux, Stephen Segrave, and Robert Passelawe.

In the same colloquy Edmund Archbishop of Canterbury caused to be read a copy of the letters of betrayal of Richard the Earl Marshal which had been sent by the counsellors of the king to the magnates of Ireland, before the king and all the assembly of bishops earls and barons; whereupon the king himself and all others who heard were extremely sad and driven so far as the shedding of tears. And the king confessed in truth that he had commanded his seal to be affixed on certain letters which had been presented to him, compelled by the Bishop of Winchester and Peter de Rivaux and others of his counsellors, but he affirmed on oath that he had never heard the contents of those letters. And the Archbishop replied to the king, saying "Search your conscience, king, because all those who caused those letters to be sent and who knew of that betrayal, were guilty of the death of the Marshal, just as if they had slain him with their own hands." Then the king, having consulted his counsellors, caused the Bishop of Winchester and Peter de Rivaux, Stephen Segrave and Robert Passelawe to be summoned by letter, to come at the feast of St. John, to render account of the moneys received and their expenditure, and also of his seal, which they had used evilly, quite unbeknown to himself, so that they should come to reply then and suffer right. . . . [The evil counsellors fled, but appeared later before the king, under safe conduct. The king looked with a grim eye towards Peter de Rivaux and said "Oh traitor, it was by your evil counsel that I, in ignorance, placed my seal on the letters which betrayed the Earl Marshal; by your evil counsel I have exiled him and others of my natural men from my realm, and have

turned both their minds and hearts from me; by your evil counsel especially I have made war against them, by which I have used up my treasure and the wealth of my subjects." Peter did not deny anything, but begged for forgiveness: he was protected by his clerical estate. Stephen Segrave, similarly accused by Henry, replied to the charge of evil counsel, that since the king had several [*plures*] counsellors, any mistakes which had been made should not be attributed to him alone.]

—From Roger of Wendover, *Flores Historiarum*, ed. by H. G. Hewlett (R.S., 1889), III, 72-93.

## CHAPTER III

# The “Paper Constitution” of 1244

### (a) *Some Recent Works*

DENHOLM-YOUNG, N., “The ‘Paper Constitution’ Attributed to 1244” (*English Historical Review*, LVIII, Oct., 1943, 401-23).

—*Richard of Cornwall* (New York, 1947).

POWICKE, SIR F. M., “The Compilation of the *Chronica Majora* of Matthew Paris” (*Proceedings of the British Academy*, XXIX, July, 1944, offprint).

### (b) *Introduction to the Documents*

THIS chapter centres on a reforming ordinance which has been variously attributed to the years 1238 and 1244. It was drawn up by the opposition to Henry III, but never put into effect, and thus has been called a “Paper” Constitution. The first document printed below is a very brief extract from the monastic chronicle called the *Annals of Dunstable*, which describes Henry’s council in 1237. It seems to make it clear that the king had reverted, after 1234, to a policy with regard to the council similar to that which he had pursued before. The meaning of the original Latin of this extract is obscure. The Bishop Elect of Valence came to England, it says, in 1237 (actually it was in 1236), and he was made chief councillor of the king. Along with him, were eleven other councillors, who swore to give faithful counsel to the king. He himself (that is, either the bishop elect or the king) swore, on his part, to be obedient to their counsels. Mr. Denholm-Young has recently emended the text of this chronicle to make it state without ambiguity that it

was the bishop, and not the king, who swore to accept the counsels of the eleven; but the question may perhaps be regarded as still open. If the older interpretation is true, it obviously represents the record of a rumour which was circulating around the country, of Henry's complete subjection to his new advisers. If the recent interpretation is correct, it represents a reflection of the new and striking solidarity which was being achieved by the council under the guidance of William of Valence, possibly inspired by analogies in France. In any case, we probably have here evidence of the existence of an oath taken by members of the "Privy" Council, the first evidence which has so far been found; and the alarm caused by the nature of the council, together with the opposition to it, show how the king's policy was still dividing the country, and help to explain the opposition which produced the Paper Constitution of 1238 or 1244.

The second and last extract below is an account of the parliament of 1244 itself, from the pen of Matthew Paris, probably the finest chronicler of medieval England, and the only writer to give a detailed account of these events. Matthew records the Paper Constitution as a product of this parliament of 1244; but Mr. Denholm-Young has recently suggested that the insertion of the plan of reform at this point, in Matthew's narrative, was not done by the famous chronicler himself. It was done by some literary reviser, who took it from Matthew's scrap-book, still fortunately surviving, called the *Additamenta*, and inserted it in the *Chronicle*, very clumsily, in the wrong place. He put it under the year 1244; but he should have put it under the year 1238. This is the year, Mr. Denholm-Young suggests, to which a reforming ordinance such as the Paper Constitution most probably belongs.

If Mr. Denholm-Young is right, he has, in the words of Professor Powicke, "given a striking example of the

possibilities which lie in a new approach to the text and arrangement of the *Chronica Majora*. . . . Whether or no his precise conclusions are acceptable, he has certainly shaken an important document loose from a date which has caused historical scholars much embarrassment."<sup>1</sup> In support of his theory, he has pointed out what he considers to be a "glaring contradiction" between the title of the Paper Constitution, which claims that the reforms contained within it were granted by the king, and the text of the *Chronica Majora*, which says that the king in 1244 rejected the baronial demands for reform. The text of Matthew Paris is, he argues, much more favourable to the view that the Paper Constitution was put forward and accepted in 1238. The misplacement of such an important document as the Paper Constitution in a chronicle as outstanding as the *Chronica Majora*, would be difficult to attribute to Matthew himself, but is not difficult to explain as the work of a literary reviser. The double narrative of the chronicle at this point is to be explained however, not as the work of another writer, and not by Matthew's attempt at logical grouping of subject matter, but by the interruption in his work caused by a journey abroad.

The other arguments used by Mr. Denholm-Young and Professor Powicke with regard to the dating of the Paper Constitution are too detailed to find a space in this volume. One or two points may, however, be discussed. The title given to the Paper Constitution is clearly a very strong argument in favour of Mr. Denholm-Young's thesis. However, it is not quite conclusive. It seems probable, whatever date we assign to the document, that it was, in fact, only a draft of reforms. It was

<sup>1</sup> In the *Proceedings of the British Academy*, cited above. Since this was written, Professor Powicke has accepted the date 1238, with all reserve, in his *King Henry III*, 291, n.2: "the document fits the earlier date to which it is here ascribed better than 1244, but should not dogmatically be ascribed to February 1238."

not a constitutional scheme finally accepted by the king. If it had been accepted, it would have constituted a major break in constitutional development, such as did not, in fact, occur between 1227 and 1258. Thus, the title may only have indicated what was proposed, not what happened. It was careless to keep it in the document as inserted in the chronicle, but not so careless as to insert the document six years out of its proper place.

This has a bearing on another argument. It has been suggested<sup>2</sup> that if there were the slightest evidence to indicate the existence of an agreed scheme of the kind set forth in the Paper Constitution, later than August, 1238, it would be much easier to accept the date given in the *Chronica Majora*. But perhaps we do not need evidence of an agreed scheme. If the Paper Constitution was only a draft,<sup>3</sup> all we need is evidence of a strong baronial proposal for reform, and this is surely provided by Matthew Paris's story of the assembly of 1244, translated in part below. The magnates were actually asked by Henry if they wished to make "provision" regarding reforms. They elected a committee to "provide." They made a "petition"; and although their recorded provisions bear small resemblance to the Paper Constitution, it is not unreasonable to think that they considered more than one radical proposal of reform. If we may consider the Paper Constitution as only a draft, put forward but not accepted, then it may be said with some assurance, that the conditions for such a project were almost as favourable in 1244 as they had been in 1238.

There was ample time for the Paper Constitution to be produced in the assembly of 1244. It probably met on November 3 and was adjourned some time before Christmas. But a date was given when it was to meet again.

<sup>2</sup> *Ibid.*

<sup>3</sup> The title may just possibly mean that Henry had consented to the drawing up of the reforming provisions, not that he had actually accepted the provisions themselves. See the actual wording translated below.

The date was three weeks after the Purification of the Blessed Virgin (February 2), and the three weeks' interval is important. The members had plenty of time to discuss grievances and present demands for reform.<sup>4</sup> The reference, in the narrative, to "the aforesaid three weeks," which has rightly been regarded as showing the clumsiness of the literary reviser, may also suggest active baronial discussions from February 2 to 23. The details of the proposals of 1244 are equally capable of explanation. The request for a Chancellor, for instance, is equally intelligible in 1244 as in 1238; perhaps more so, for the barons had specifically complained, in the parliament of 1244 that "by lack of a chancellor writs had often been issued against justice," and in that year (unlike 1238) Henry was attempting to run his Chancery under Keepers of the Seal.

But perhaps the strongest argument for the date 1244 for the Paper Constitution, is the fact that the writer of the revised copy of the *Chronica Majora* placed it under that date, in the midst of the proceedings of the parliament of 1244. Professor Powicke believes that the part of the *Chronica Majora* which deals with the assemblies of 1238 and 1244 was written in its present form between 1253 and 1257. It was a fair copy, made under the chronicler's own supervision. Now Matthew Paris made many mistakes in his great *Chronicle*, and these have often been pointed out.<sup>5</sup> It is fashionable to treat his text very freely. Sometimes it seems as if the modern tendency is being carried a little too far. In this case, it is hard indeed, though not at all impossible, to believe that an historian like Matthew Paris misplaced, or allowed to be misplaced, such a striking document as the Paper Constitution, which had been composed such

<sup>4</sup> Cf. Powicke, *King Henry III*, 298, n.2.

<sup>5</sup> See especially A. L. Smith, *Church and State in the Middle Ages* (Oxford, 1913).

a comparatively short time before. Yet it is only fair to record that such an historian and critic of Matthew as Professor Powicke does not comment on this aspect of the question.<sup>6</sup> Still, on the whole it seems likely that the allocation of the document to 1244 by Matthew Paris (or even by a literary reviser) must be regarded as sufficient to keep it there for the present, in spite of the serious difficulty provided by the discrepancy between the title and the text.

The question of the date of this document has seemed worth discussing at considerable length, both because of the very important and acute modern discussion of the problem already referred to, entailing incidentally an evaluation of the great *Chronica Majora* of Matthew Paris, and because of the intrinsic importance of the document itself, representing the first great scheme of reform in the reign of Henry III. A word or two should now perhaps be said of the contents of the Paper Constitution, and of why it failed to have any effect.

The great innovation of the baronial scheme of reform which was presented in it, was the election of four magnates by "all," who were faithfully to treat concerning the business of the king and of the realm. They were to show justice to all, and were to accompany the king so that they might hear the complaints of everybody and remedy the wrongs of all. As they had been elected with the assent of all, they should not be removed without common consent. If one fell out, he should be replaced by co-optation. The *universitas regni* should not convene without them, but should meet, when necessary, at their request. There were other miscellaneous provisions and suggestions in the Paper Constitution. There was a very

<sup>6</sup> Or rather, in the Preface to *King Henry III*, he says: "If, as I think, it was not copied by Matthew Paris from his collection of documents or memoranda book as he wrote his chronicle but was inserted some years afterwards while he supervised the fair copy upon which we have to rely, there is no reason to be surprised at its displacement."

important and original attempt to exercise some control over expenditure by the king. Writs against the king and the custom of the realm should be recalled; Justiciar and Chancellor should be elected by all; since the justices and barons of the Exchequer were to treat about the business of everybody, their election, too, should be agreed upon by all.

Harsh words have been said about this document, about its reactionary nature, its pseudo-democratic flavour, and its purely baronial outlook. Baronial it certainly was. It could not, under any circumstances, in the middle of the thirteenth century, have been otherwise. It may have looked back to the less specialized constitution of the twelfth century, though this is very doubtful. But it is hard to see how it could be called reactionary; to good royalists it must have seemed radical indeed. In some respects it was a very important advance on the constitutional ideas of Magna Carta. Altogether, it should perhaps be regarded as a bold, but by no means unstatesmanlike, attempt to solve the most urgent constitutional and political problems of the time.

The problem centred, as we have already seen, on the *negotia regis et regni*. This, Henry was attempting to settle with the advice of his "Privy" Council and without the effective participation of the magnates of the realm. The main object of the barons, in their scheme of reform in 1244, was to safeguard their ancient co-operation in the *negotia regni*. This they did by the election of the four conservators of liberties, who were faithfully to treat, probably with the king and his "Privy" Council, concerning both the business of the king and of the realm.<sup>7</sup> The four conservators would now take part in all

<sup>7</sup> It is to be noticed that, even in the king's "Privy" Council, the conservators were not merely to give advice, they were to "treat." This is what they normally did in the great council. It possibly implies that, even in the small council, according to the new plan of the barons, it was necessary for the king to get the agreement and consent of the conservators, for major decisions. On the other hand, the small council was to treat about *negotia regni* as well as *negotia regis*.

the business of the inner council; they were empowered to discuss both the *negotia regis* and the *negotia regni*. There was no business which the king could dispose of with only his intimate advisers and friends, if the magnates wished to attend. For the first time in history, the magnates put forward an explicit and challenging claim to take part in all the major decisions of state, including some which by custom and tradition had normally fallen within the province of the king alone. On the other hand, the claims of the *magnum concilium* were safeguarded. Its summons was no longer to be simply at the monarch's discretion; the assembly was to meet "when necessary" at the discretion of the conservators. This would have meant in practice, it can hardly be doubted, that all the more important matters affecting both the king and his subjects would be discussed in general assemblies, a position roughly arrived at, after much friction and bloodshed, at the end of the reign of Henry III. The new disposition of the affairs of the king and the realm, and the new office of conservator of liberties at the centre of all the acts of government, were the great contribution of the men of 1244 to the constitutional problem of the thirteenth century. It was not a bad contribution, perhaps not deserving the hard names which have been bestowed upon it. It was a not unstatesmanlike attempt to accommodate the ancient traditions of the community to the changing conditions of the age.

The other provisions of the Paper Constitution are comparatively unimportant. The terms in which the authors of the scheme of reform set up some control over expenditure were very original and daring, but necessarily vague and probably impracticable. Others show a deep suspicion of the *universitas* with regard to the great expansion which was taking place in the forms and processes of law, and obtained for the magnates a share in the election of Chancellor and Justiciar. Together with

the changes proposed in the great and "Privy" Council, these constituted infringements on the supreme executive power of the monarch and on his control over his servants, to which no monarch in the medieval period would willingly have submitted. The same is only a degree less true of the demands made with regard to the election of justices and barons of the Exchequer; in their reference to these, the magnates showed how important, in their minds, was the connection between common business and common consent; but though this was the articulation of one of the greatest political ideals of all times, its application to the appointment of such officials was certain to be bitterly opposed by the king.

Their radical nature alone is sufficient to explain why the proposals of 1244 never became anything more than a Paper Constitution; but there are perhaps also other reasons. The inopportune arrival of the Papal agent, Master Martin, with clear designs on the wealth of the church, weakened the position of the clergy and divided the opposition.<sup>8</sup> Henry was lavish with pressure and promises, both by deputy and in person. He swore to maintain the nation's liberties intact. He promised that the bishops would anathematize all who should trespass against those liberties at any point. The magnates drew up, for Henry's benefit, a long list of his exactions; but though there was debate from day to day, and though the magnates managed to impose conditions on the grant they ultimately made to the king, the time was not yet ripe for the exaction of such reforms as they had drawn up in the Paper Constitution. The king would have to be much harder pressed by circumstances, and they would have to be much more exasperated by his policy at home and abroad, before they would, in 1258, not only formu-

<sup>8</sup> He had arrived about Easter, but he did not consult an assembly of the clergy with regard to another subsidy until autumn; see Lunt, *Financial Relations of the Papacy*, 206-10, and the references there given.

late an extensive scheme of constitutional reform but actually impose it, for a time, on the unwilling king.

(c) *Documents*

- I. The mutual oath of Henry and his councillors in 1237 (probably 1236), according to the *Annals of Dunstable*.
- II. The parliament of November, 1244, according to Matthew Paris.
- I. The mutual oath of Henry and his councillors in 1237 (probably 1236), according to the *Annals of Dunstable*.

In the year of grace 1237 the Bishop Elect of Valence, uncle of the queen, came to England [the year was actually 1236]; and he was made chief councillor of the king. Along with him were eleven other councillors, who swore on the Gospels that they should give faithful counsel to the king. He himself<sup>1</sup> similarly swore that he would be obedient to their counsels; but I think neither party was free from perjury.

—From *Annals of Dunstable* in *Annales Monastici*, III, 146.

II. The parliament of November, 1244, according to Matthew Paris.

In that same year, the magnates of all the realm, archbishops, bishops, abbots, priors, earls and barons, had gathered together, summoned to London by royal summons. In this council the king made a verbal request in the refectory of Westminster, that a pecuniary aid should be made to him. He passed over in silence his own design of strongly attacking the king of Scotland; but he openly revealed that in the year past he had crossed into Gascony by their counsel, as he said, and that he was in debt for a large amount of foreign money; nor could he be freed from this debt unless he was most generously

<sup>1</sup> Mr. Denholm-Young's emendation is shown in square brackets below:  
*qui super sacrosanta juraverunt quod fidele consilium regi praestarent [et electo]. Et ipse similiter juravit quod eorum consiliis obediret.*

aided by them all. It was replied to him that they would treat about this matter. The magnates left the refectory, and the archbishops, bishops, abbots and priors met separately and apart, to treat diligently about this business. In the end, they [the prelates] were asked on behalf of the earls and barons, if they wished to agree unanimously to the counsels of the latter in making a reply and a "provision" concerning those matters. They replied that they would do nothing without the general *universitas*.<sup>1</sup> Then, by common assent, there were elected, on behalf of the clergy, the Archbishop-elect of Canterbury, and the Bishops of Winchester, Lincoln and Worcester; and on the part of the laity, Earl Richard, brother of the king, Earl Bigod, Simon de Montfort Earl of Leicester, and Walter the Earl Marshal; on behalf of the barons, Richard of Mountfichet and John Balliol. Also the Abbots of St. Edmunds and of Ramsey were elected. Whatever these twelve should "provide," would be declared in common; nor should it be shown to the king in any form, by authority of the twelve, unless the common assent of all had been obtained.

And because the charters of liberty which the lord king formerly conceded, and for the keeping of which Edmund Archbishop of Canterbury took oath, gave security and promised most faithfully for the king, have not yet been observed; and because the aids which were so often granted in the past have brought no profit to the king or the kingdom; and because, through lack of a chancellor, writs have often been issued against justice; it was asked that, according as they should choose, a justiciar and chancellor should be appointed<sup>2</sup> by whom the condition of the realm should be made stable, as was wont.

And lest he should seem to enact anything new by compulsion of the council, the king would not agree to the

<sup>1</sup> *Sine communi universitate.*

<sup>2</sup> *Fierent.*

petition of the magnates; but he promised that he would amend what he had heard on their behalf. Therefore an adjournment was granted to them<sup>3</sup> until three weeks from the Purification of the blessed Virgin, so that they might meet there again at that time. Thus if, by his free will, the king should in the meantime elect such counsellors, and should treat about the rights of the kingdom in such a way, that the magnates should be satisfied, then, at the end of the adjournment,<sup>4</sup> they would give a reply regarding the granting of an aid, providing always that if any money should be granted to the king, it should be spent by those twelve [mentioned above] for the profit of the realm.

The lord king delayed them for several days, wishing to bend them to compliancy, when they were weakened by weariness, so that they would consent to contribute an aid without a postponement of the end. He met them many times, but he did not get around them,<sup>5</sup> because the magnates, considering this prudently, persisted steadfastly in what they had proposed. Then at length the lord king, hoping at least to bend the clergy to his wish, called the prelates together, and publicly put before them papal letters in the following form.

[Then follows the letter of the Pope Innocent IV to the prelates, urging them to give an aid to the king. Henry exhorted the prelates, meeting apart from the secular lords, until finally—the exact time is uncertain—they escaped and went home. After this, in the *Chronica Majora*, comes the “Paper Constitution,” with the heading:]

*The magnates “provided” these things, with the consent of the king, to be observed in future in their entirety.*<sup>6</sup>

<sup>3</sup> *Datus fuit terminus eis usque . . .*

<sup>4</sup> *Ad terminum illum.*

<sup>5</sup> *Nec circumvenit.*

<sup>6</sup> *Haec providebant magnates rege consentiente inviolabiliter deinceps observari.*

Concerning the liberties bought on another occasion, conceded, and confirmed by the charter of the lord king, that they be kept in future. For greater security in the matter, let a new charter be made, which makes special mention of these things. And let a solemn excommunication be uttered by all prelates, of those who knowingly and designedly shall presume either to oppose or to obstruct the liberties conceded by the lord king, whereby they shall not be fully observed. And let the condition of those who suffered damage in their franchises, [or liberties] after the last concession, be reformed.

And because that which on the previous occasion had been promised, has as yet been fulfilled, neither through the force of the oath which was taken, nor by fear of the sentence which was uttered by the saintly Edmund; lest a danger of the same thing happening should arise in the future, so that the last conditions should become worse than the first, let four be elected by common assent, who have power and rank, from amongst the more discreet of the whole realm, who shall be of the king's council and sworn that they will faithfully "treat" concerning the business of the lord king and of the realm, and will give justice to all without any regarding of persons. These four shall follow the lord king, and if not all of them, at least two shall always be present, so that they may hear the complaints of each person and will be able to give speedy succour to those suffering wrong. The treasury of the lord king is to be "treated" with their inspection and knowledge;<sup>7</sup> and the money which has been specially granted by all, for the profit of the lord king and of the kingdom, shall be spent as they shall see to be the most advantageous. And they shall be conservators of liberties. And as they are elected with the assent of all, so none of them can be removed without common assent. If one of them is removed, another shall be put in his place, with the

<sup>7</sup> *Per visum et testimonium eorum.*

assent and election of the three [remaining], within two months. And the *universitas* shall not meet again without them, but shall meet when it shall be necessary and at their instance.

Writs sued out against the king and the custom of the realm shall be entirely revoked. Be it remembered also regarding the uttering of sentences against those who oppose. Also, concerning the obligation of a mutual oath. Also concerning the circuit of the justices. Let a justiciar and chancellor be elected by all. And because they ought to be often at the king's side, they will be able to be of the number of the conservators. And if for any cause which comes up, the lord king shall deprive the chancellor of the seal, whatever shall be sealed in the meantime [until it is restored] shall be held invalid and void. Then let restitution be made to the chancellor. No justiciar or chancellor shall be substituted [for those in office], unless by solemn summoning of all, and by their assent. Two justices in the Bench. Two barons in the exchequer. At least one justice of the Jews. Let them be appointed on this occasion by common election so that, just as the business of all is to be "treated" [by them], so everyone may give assent to their election. Afterwards, when it shall be necessary for another to be substituted for anyone of them, the substitution to be by "provision" of the four councillors. Henceforth, those who are least necessary are to be removed from the side of the lord king.

—From Matt. Paris, *Chron. Maj.*, IV, 362-3; 366-8.

## CHAPTER IV

### The Provisions of Oxford, 1258

#### (a) *Some Recent Works*

BÉMONT, CH., *Simon de Montfort*, trans. by E. F. Jacob (Oxford, 1930).

DENHOLM-YOUNG, N., "Documents of the Barons' Wars" (*English Historical Review*, XLVIII, Oct., 1933, 558-75).

JACOB, E. F., "The Complaints of Henry III against the Baronial Council in 1261" (*English Historical Review*, XLI, Oct., 1926, 559-71).

—*Studies in the Period of Baronial Reform and Rebellion 1258-67* (*Oxford Studies in Social and Legal History*, VIII, 1925).

—“What Were the ‘Provisions of Oxford’?” (*History*, IX, Oct., 1924, 188-200).

POWICKE, SIR F. M., “Some Observations on the Baronial Council (1258-60) and the Provisions of Westminster” (*Essays in Medieval History Presented to T. F. Tout*, ed. by A. G. Little and F. M. Powicke, Manchester, 1925).

RICHARDSON, H. G., and SAYLES, G. O., “The Provisions of Oxford: A Forgotten Document and Some Comments” (*Bulletin of the John Rylands Library*, XVII, July, 1933, 291-321).

TREHARNE, R. F., *The Baronial Plan of Reform, 1258-63* (Manchester, 1932).

—“The Personal Rule of Henry III and the Aims of the Baronial Reformers of 1258” (*History*, XVI, Jan., 1932, 336-40).

—“The Significance of the Baronial Reform Movement, 1258-67” (*Transactions of the Royal Historical Society*, IVth Series, XXV, 1943, 35-73).

(b) *Introduction to the Documents*

THERE are a great many documents which can be grouped under the title of the Provisions of Oxford. They cover one of the greatest and most striking reform movements in English history, lasting from 1258 to 1267. Thirteen have been selected as being the most important for this study. The first is a preliminary document, the complaint of the barons in 1248, together with the king's reply, as recorded by Matthew Paris. After this there are printed a group of documents relating to the issue of the Provisions of Oxford; Documents II and III are the records of the terms of Henry's acceptance of the plan of reform, and Document IV gives the main clauses of the Provisions of Oxford themselves. Document V is the report of a famous protest by the “Community of the Bachelors of England,” made in 1259, against the delay in carrying out the reforming programme. The sixth extract gives some clauses of the so-called Provisions of Westminster. These Provisions were the second instalment of the Provisions of Oxford, and they were issued shortly after the protest of the “Bachelors.” The next piece of evidence (Document VII) gives us a glimpse into the public feeling about the Provisions of Oxford in July, 1263, after many months of reform, dissension, and political strife, in the shape of a demonstration of their sentiments by citizens of London. Extracts VIII and IX give us the relevant material, or rather, a small portion of it, for the vexed question of the well-known arbitration by Louis IX in January, 1264. The first is the agreement of Henry to the arbitration, whilst the second gives the actual terms of the award.

After this, there follows a very complicated group of

records relating to the negotiations between Simon de Montfort, Henry, and Louis, after the victory of Simon at the Battle of Lewes. The first of these (Document X), consists of extracts from the Patent Rolls, one of the official records of the Chancery, which was the department of the Great Seal. They relate to certain negotiations held at Canterbury in August, 1264. Document XI is the so-called *Compromissio*<sup>1</sup> of Rishanger, appearing in its earliest (or possibly its earliest) form in Rishanger's chronicle. It is an agreement for arbitration between the king and the rebellious barons, which figured very prominently in the negotiations at Canterbury, and possibly before. Then follows Document XII, known as the *Forma Regiminis*, or "Form of Government," which was the basis on which Simon constituted his government of England from the end of 1264, when attempts at arbitration failed, until his overthrow by the royalists at Evesham, on August 4, 1265. Finally, there are given, in Document XIII, some extracts from the Dictum of Kenilworth of 1266. This expresses part of the royalist restoration after the great period of baronial experiment and reform which had followed the first agreement by Henry, in 1258, to accept the baronial provisions for the emendation of his realm.

All these constitute a formidable body of documents; and before we discuss them in detail, it may be wise to present very briefly some of the issues raised by recent writing on the period. No one doubts that the period is one of the most important in the history of the medieval constitution; but there are differences of opinion, or at least the present writer hopes that there are differences of opinion,<sup>2</sup> regarding the aims and motives of the chief actors in this great crisis, and the extent to which they

<sup>1</sup> A *compromissio* is a compromise or acceptance of arbitration. Actually Rishanger called it a *compositio*, perhaps meaning reconciliation.

<sup>2</sup> I ventured to differ from the orthodox view in my *Studies*, 180-95.

were constitutionally justified in the policies which they pursued. The policy of the reforming barons, and particularly of Simon de Montfort, has usually been regarded as being without serious blemish, whilst few writers have had a good word to say about the claims and actions of the king. Henry, it is generally agreed, was forced to accept reforms because of the hopeless weakness of his government at home and abroad, coupled with an unrealistic and universally unpopular ideal of monarchy, which was at complete variance with the traditions of the nation. Given this unique opportunity, the barons, under the leadership of Simon de Montfort, entered on a deliberate and enlightened revolution—"If their project was not a revolution, our history has known none yet." They were inspired by the ideal that government is for the sake of the governed, and not for the sake of the government or of a privileged class. They were foiled in their attempt, it has been said, by two main factors: by the obstinacy, petulance, and duplicity of Henry, and by the selfishness of some of the magnates, notably Richard of Clare, Earl of Gloucester. These magnates lacked the greatness of Simon and the public spirit necessary to carry out reforms which entailed sacrifices, not only by others, but also by themselves. In the main, the assumption is that Simon and his supporters were on the side of constitutional progress. They had the best traditions of the nation and the real hopes for the future on their side; this is shown by the support Simon received from the lesser landowners and from the burgesses whom he summoned, as an important constitutional precedent, to the parliaments of 1264 and 1265.

This picture, it is possible however, does less than justice to the position of the monarchy in the constitution of the thirteenth century, and to the claims and policy of Henry III. There is a general agreement as to the causes of Henry's surrender to the barons in 1258; indeed the

present writer would stress the danger of Henry's policy to the liberties of the people even more than its inefficiency and failure. But after this, agreement ceases. Against the general interpretation suggested above, it can be argued that, though the magnates of 1258 were undoubtedly inspired by the highest motives, they found it impossible to carry out their reforms, in the face of the hostility of their ruler, without taking upon themselves responsibilities and powers for which they had no clear constitutional justification, and without alienating a good deal of honest, conservative, and deeply patriotic opinion. They were forced, in fact, to assume a position which seemed to threaten the deepest medieval traditions of monarchical rule. As in the case of almost every great dispute in history, there were two sides to the question. Henry was obstinate and misguided; but he was not entirely in the wrong. Our sympathies may lie with the reformers, but the royalists had a case. The constitution may have been ambiguous, as it usually was in the Middle Ages, though not so ambiguous and uncertain as is often believed; but in the main, as the dispute developed, the constitution supported Henry rather than his opponents, at least on the narrow basis of legalism and precedent. The attitude of the king was not only due to petulance and obstinacy, but also to the fact that he had a grievance of his own against the barons, and a clear sense of his rights and his duty to his office. Throughout the whole dispute, there was a deep difference between Henry and his opponents as to what had been agreed upon at the outset of this reforming movement, and as to what was implied by the clauses of the Provisions of Oxford. There is little doubt that both sides had some grounds for their interpretation of this famous document; but on the whole it seems likely that, as time went on, the greater truth lay, not on the side of Simon de Montfort, but on the side of the king.

The differences between modern historians, like those between contemporaries, are mainly differences of interpretation. They are due to all sorts of factors outside the immediate documents and cannot easily be reconciled by debate. Still, the documents are obviously of supreme importance, and those given below offer the student an opportunity of making some judgement on the differences of opinion. This is the more possible since a very good presentation of the point of view from which the present writer has ventured to differ in some particulars, is given by Professor Treharne, in the works referred to above.<sup>3</sup>

The nature of the underlying dispute, and the kind of arguments employed by Henry in his moments of arrogance, are illustrated in Document I. The only comment on this which is perhaps necessary, is a warning not to underrate the strength of the royal position which it reveals. Henry exaggerated the personal nature of the monarchy and the extent to which the government of England could be regarded as the same as that of any other lord; but the monarchy to which he appealed was, in the main, the traditional monarchy of England; and the king's ministers could still, with some justice, be regarded as *domestici*, responsible to no one but the king. They, and the king's personal advisers, it could be argued, were the king's own concern; in regard to them, as in regard to many other important aspects of government, the monarch was constitutionally subject to no sort of limitation or control. This extract gives a glimpse of the tradition of the ancient monarchy, in supreme control over the executive, which Henry tried to sustain throughout all his reign, and which was a formidable obstacle to the assumption of power by the reforming barons in 1258.

<sup>3</sup> One or two comments on Professor Powicke's more recent treatment, in *King Henry III*, are given below.

The terms on which the barons began their famous reforming movement are obviously of very great importance. These terms are set forth in both Documents II and III, of which the first is a royal letter proclaiming that Henry had agreed to ordain concerning the state of the kingdom, before Christmas, 1258, with the advice of the eminent and loyal men of the kingdom, and of the Papal Legate if he should come to England. The time given for this reform is to be noticed, and also the fact that only the state of the kingdom is to be amended, not the state of the king. It is not easy to know how much significance to give to this limitation, but in view of the importance of the problem of the *negotia regis et regni* in this century, it seems likely that the limitation was very significant indeed. The second letter sets forth Henry's agreement to the election of twenty-four, by whom the state of the kingdom (again, not including the state of the king), should be reformed. Henry agreed to observe whatever was ordained in this matter by the Twenty-four. He thus agreed to accept the Provisions of Oxford which were the work of the Twenty-four, but with some limitations of time and of scope, indicated above, and with the assumption that it was Henry, and not the barons, who was to put the reforming ordinance into operation. These facts were to be of great importance in the months to come.

So far there is nothing to indicate that Henry agreed to surrender any part of his royal authority to the barons, even though he had given consent to a very comprehensive scheme of reform. Indeed, it could be argued that he had especially excluded the royal position and power from the scope of the reforming movement. But it is different when we come to the Provisions of Oxford themselves (Document IV). Amongst the reforms contained in these, was the setting up of a council of fifteen with extensive, though ambiguous, powers. The whole

dispute between Henry and the opposition came to centre almost exclusively on the position and powers of this body, which later did, indeed, rightly or wrongly, constitute itself virtually the governing body of the realm. Henry could later refuse to give his consent to the council's definition of its powers, on the grounds that, though he had accepted the Provisions, he had never agreed to such a derogation from his royal position. The barons could insist that the powers they claimed for the council were implied by the terms of the Provisions to which Henry had given his consent.

The meaning of the actual words in the Provisions of Oxford which defined the functions and powers of the council of fifteen will accordingly be discussed at some length. But it must be emphasized that every clause of this famous enactment was important, and many of them, like the clause describing the position of the Chancellor, have a great value as evidence for the functions of the council of fifteen. On the whole, they suggest that the powers of the council were intended to be larger than those directly conferred upon it in the clause we are about to discuss; words like "they shall have power over the chief justiciar and over all other people," taken in isolation, suggest a direct control over the executive. But it still seems likely that the dispute between Henry and the barons as to the functions of the council would turn, in the last analysis, on the powers conferred on this body in those sentences which were particularly devoted to it. It is very hard indeed not to believe that every one of these words was carefully chosen, with a full realization, by those who drafted the Provisions, of the fundamental issues that were involved. It may well be that those issues went much deeper than could be expressed by the formal phraseology of an official or semi-official document; but still it is perhaps a mistake to underestimate the importance of the wording

of such a document, when the country was later brought to the verge of civil war by disagreement as to what sort of régime the Provisions of Oxford had been intended to set up.

The actual words applied to the council of fifteen, in the Provisions, are as follows: "And they shall have power of advising the king in good faith concerning the government of the kingdom and concerning all matters that pertain to the king or the kingdom, and for the purpose of amending and redressing everything that they shall consider in need of amendment or redress. And they shall have authority over the chief justice and over all other people." Concerning the three annual parliaments, the Provisions say: "To these three parliaments the chosen councillors of the king shall come . . . in order to examine the state of the kingdom and to consider the common needs of the kingdom and likewise of the king." They had power, that is, of advising the king and (doubtfully) of amendment and redress; but how these powers were intended to affect the existing authority of the ruler, it is not possible to be sure. The argument which I have already set forth elsewhere,<sup>4</sup> in favour of Henry's contention that the words of the Provisions did not justify the assumption, by the council, of power over the ruler, may perhaps be repeated at length:

The duty of advice was given first place in the council's functions; and its activities were more specially directed to the task of reform. The assumption is surely that king and baronial council would now together go forward to apply the reforming Provisions of the twenty-four. There was no need to attempt the thorny task of delineating exactly their respective powers; they were, as yet, united in harmonious agreement to carry out the reforms. Each side may have been making reservations, and each may have been waiting for an opportunity to interpret the agreement to its own advantage, particularly in the case of the king. The barons may, in all sincerity, have taken the acceptance of a baronial council by

<sup>4</sup> *Studies*, 185-6.

the king as meaning the acceptance of baronial control. It is hard to credit them with such simplicity. In any case, if that was their interpretation of the situation, they had allowed themselves to be put hopelessly in the wrong by the public commitments they had made up to this point. From whatever reasons or motives, it seems clear that they had given Henry III every ground for denying strenuously and successfully that he had ever consented to a baronial council which should take the main functions of government entirely out of his hands.

Thus the reforming movement of 1258 began with a fatal ambiguity as to the powers of the all-important council, and bitter dissensions were almost certain to ensue. Before looking at these, however, a brief word must be said about other features of the Provisions. In one sense, the clauses relating to the council though they have received much the greatest attention, were not the most important part of the baronial programme. The ordinances of 1258 set on foot very important inquiries into local abuses, on which most valuable work has been done in recent years. It is clear that they contemplated radical changes in the chief administrative and judicial offices and in the king's household. But the most important clauses of all were relative to the central and pivotal institution of parliament; and it is these which have been largely overlooked. This subject will be dealt with in another volume, and cannot be discussed at length here. It is sufficient to say that in 1258 the magnates for a time achieved what they had attempted in 1244, namely a solution of the fundamental problem of the *negotia regis et regni*. They achieved a restatement of the ancient tradition that monarch and people should co-operate in the important affairs of the community, in terms of the institutions and practices of the new age. The magnates now associated both the parliament and the "Privy" Council with all the business of government. The council was to have power to advise the king in all matters that pertained to the king or the kingdom; the

councillors were to attend parliament to consider the common needs of the kingdom and likewise of the king. Like the four conservators of 1244,<sup>5</sup> the councillors of 1258 were to be present at all meetings of council and parliament, to see that the business of the king and kingdom should truly be considered in both. Parliament itself was to meet three times a year, at least, to consider the affairs of the king and of the kingdom. Thus the old distinctions between the affairs of the king and the affairs of the community, which had once been so important, and which had found an important place in the claims of Henry III, were now done away with, at least in the business of parliament and council, and the *universitas* was admitted into a full and free discussion of all matters of state. This is a landmark in the history of parliament, and the truth of this remark does not seem to be invalidated by the question of personnel which is discussed in another place.

The protest of the Bachelors of England, which is the next document to be considered, is perhaps the most important piece of evidence showing the reaction of the nation, or at least part of the nation, to the new situation, after the reforming council had largely taken over control of the country, and after the significant date of Christmas 1258 had gone by. The Bachelors were probably the knights and lesser landowners from the households of the great. They represent a "democratic" opinion, and thus their protest presents a special problem to those who have found some of the inspiration of Simon de Montfort in the fact that he was the hero and champion of the lesser folk. The Bachelors addressed their protest, in October, 1259, to Prince Edward, probably an enemy of the extreme party amongst the barons, and to Richard, Earl of Gloucester, who was at that time, it seems

<sup>5</sup> There was probably a direct connection between some of the ideas of 1258 and those in the plan of reform of 1244.

possible, estranged from the Earl of Leicester and his group. They declared that the king had performed all that the barons had ordained and constrained him to do, but that the barons had done nothing of what they had promised for the good of the realm, but only for their own good and to harm of the king everywhere, and that unless a remedy were provided for this, the agreement (at Oxford?) would be restored in another fashion.

The view of Stubbs and other historians of this episode, was that it represented an expression of hostility to the baronial council, due to the delay of the council in publishing its reforms; and that the main result of the protest was the speedy appearance, before the nation, of the next great instalment of reform, the so-called Provisions of Westminster, of October, 1259. Lately, there has been a tendency to explain the episode away, at least as reflecting hostility against the majority of the reforming council of 1259. The Bachelors, it is said, were really directing their hostility against the reactionary members of the baronial party, possibly including the Earl of Gloucester himself. These members were obstructing the publication of the reforming Provisions of Westminster because the new Provisions would bring personal loss to themselves, and were thus opposing the wishes of Simon, who was always zealous for reform.<sup>6</sup>

The greatest obstacle in the way of this modern view seems to be the language of the protest itself. The Bachelors did not denounce only a section of the barons, but "the barons themselves." Another difficulty lies in the theory that there was a reactionary party headed by the Earl of Gloucester. It seems certain that Gloucester was reluctant, at some time, to continue in line with the more extreme reformers; but it is not certain that this was only

<sup>6</sup> The latest interpretation is by Sir F. M. Powicke, *King Henry III*, 407, who suggests that the Community of Bachelors was alarmed lest the interests of the tenants in the franchises should be overlooked. He does not suggest who was holding up the reforms.

because he would not admit reforms on his own estates. It may be that he wished to end the exceptional conditions of government by a reforming council and return to the traditional royal rule. If this was the case, he would have wanted to hasten, not obstruct, the completion of reforming ordinances, so that normal conditions could be restored. Such an attitude on his part would explain why the Bachelors addressed their complaint to him, along with Prince Edward.

The evidence we can find to throw light on the meaning of the protest is inconclusive, and only the most tentative conclusion should be drawn. But at least it seems dangerous to believe that the Bachelors were actually supporting Simon de Montfort, in view of the methods and words which they chose. On the other hand it seems safe to suggest at least the possibility that the protest of the Bachelors showed the existence in 1259 of a sentiment which favoured restoring the normal practices of government. There is very good reason to expect such a growth. It is certain that Henry was later very hostile to the position assumed by the reforming council, and it seems almost equally certain that Simon de Montfort was reluctant to surrender this position, honestly impelled, no doubt by consideration of the incomplete task of reform. There is no doubt, also, that Henry had a case, after Christmas, 1258, for demanding a return to normal monarchical government, which would increasingly attract the more conservative of the barons. There is some evidence that the Earl of Gloucester was of this company. On the whole, it seems more attractive to regard him, and others who later deserted Simon de Montfort, as governed by patriotism and a desire to avoid civil war, rather than by selfishness and instability, though their motives, like those of most men, may have been very mixed. Perhaps, in his condemnations of the magnates of England, who took part in

one of the finest reforming movements of the thirteenth century, Simon has been taken a shade too much at his own valuation. Perhaps this has influenced even the interpretation of the protest of 1259. The protest may throw light, not only on the alignment of parties at this period, but also on the deeper reasons which led, eventually, to Simon de Montfort's failure and death. That is why it has been worth discussing at considerable length.

The next document (number XI), the so-called Provisions of Westminster, is now, since the work of Professor F. M. Powicke, clearly established as the second main instalment of the Provisions of Oxford. The somewhat technical clauses printed below are enough to show why the class of sub-tenants should be particularly anxious to have them published, for they were clearly designed to protect the interests of this increasingly important group. They reflect great credit on the reforming barons and at the same time serve to emphasize the political and constitutional importance of the smaller landowner in the second half of the thirteenth century,<sup>7</sup> that section of the community which produced the Bachelors of 1259 and the knights of the shire of 1264 and 1265. No general reform movement of this period which entirely ignored them would have been able to oppose the monarchy of Henry III for very long.

Document VII, concerning negotiations about the Provisions of Oxford in 1263, taken from a London chronicle called the *Liber de Antiquis Legibus*,<sup>8</sup> is, beside those just commented upon, not very important. But this source is itself of very great interest. It is one of the first of its kind to come from any city; it derives, appropriately enough, from London, which, in its commercial and political importance, was at least two genera-

<sup>7</sup> Since these words were written, the importance of this class, particularly of the knights of the shire, has been strongly emphasized in F. M. Powicke's *King Henry III*.

<sup>8</sup> Ed. by Thomas Stapleton (Camden Society, 1846).

ations ahead of any other city or borough in England, and which played a very prominent part in the political struggles of this period. The volume seems to have got its peculiar name because it contained, amongst other things, a copy of the regulations of London in respect of buildings and dwellings; much of its space is taken up with a simple chronicle of the mayors and sheriffs of the city; but it also contains one or two valuable pieces of information concerning events in the later part of the struggle between Simon de Montfort and Henry III. In this extract, the writer tells how Simon asked the citizens whether they wished to observe the Provisions of Oxford, or to cleave to those who wished to infringe them; and the citizens, in reply, petitioned the king for the observance of the Provisions, with the reservation that if there was anything in them harmful to the king or the kingdom, it should be amended by the consideration of good men elected for the purpose. They also petitioned that, in future, the realm should be governed, under the lord king, by loyal and useful born Englishmen and not by strangers, just as was commonly done in all other kingdoms of the world.

It has been said that this narrative shows Simon making a clear statement of his general position, and offering to allow a reconsideration of the Provisions by an elected commission. But all we can be sure of, from the wording of the narrative, is that Simon still stood by the Provisions, with no definite indication of his willingness to accept any serious modification. It was the Londoners, apparently, who, whilst they gave a general approval of the baronial plan, suggested that there might be a revision of features which were harmful to the king or the realm. The whole episode was probably part of the attempt, by Simon and the new and young Earl (Gilbert) of Gloucester, to compel a final acceptance of the Provisions by the king, an attempt which was actually the prelude

to civil war. It is to the credit of the Londoners that they still tried to obtain a reconciliation of the opposing parties. We may even guess that they were not too enamoured of the prospect of supporting Simon and his "boys"; though they were prepared to, if they had to make a choice. But the conflicting interpretations of the Provisions made impracticable the compromise which they suggested. The king's objection of 1261 was clear and, to many moderates, convincing: "when the king placed himself, under their [i.e. the barons'] counsels, he did not place himself under their custody."<sup>9</sup> Simon's appeal to the Provisions in 1263, seems on the whole, to be rather a challenge of strength to the royalists than a last-moment bid for peace.

The final prelude to the campaign of Evesham in 1264 was the famous arbitration of Louis IX. It is hardly necessary to repeat the wording of this well-known judgement. It is not in dispute. It was entirely in favour of Henry III, completely annulling the Provisions of Oxford and any powers which might be founded on the Provisions, whereby the magnates might claim to make new statutes or hold fast to those, based on the Provisions, which were already made. But there is one rather significant omission from Louis' judgement, which should perhaps be mentioned. He not only condemned the Provisions in general terms, but he also asserted the king's right in specific matters, such as the appointment of his own officers and the choice of his own council. He did not, however, lay down any specific ruling on the problem of the *negotia regis et regni* which was, in some ways, the most important problem of all. It is hardly possible to believe that he did not understand the problem, or that he overlooked it. The best guess seems to be that he did

<sup>9</sup> Quoted in my *Studies*, 192. It is from Henry's complaints against the barons in 1261, printed by E. F. Jacob and N. Denholm-Young in the articles cited above. See also F. M. Powicke, *King Henry III*, 421, n.3.

not wish to make a specific ruling on it. He restored to Henry all the powers he had enjoyed before the Provisions, and to Henry's subjects the enjoyment of their ancient customs; and he left it at that. This was, indeed, very wise, for no outsider could decide for the English people a matter as complicated and difficult as the problem of the general basis for the government of the state. But this probably meant, after the experiences of 1258 to 1264, that Louis actually gave judgement against his brother monarch, at least by omission, on this most important question of all. This fact should be remembered when considering the question of his partiality and the rejection of his judgement by Simon de Montfort, which is the next aspect of the arbitration to be discussed.

The questions of Louis' arbitration is of the very greatest importance, especially in view of the differences of opinion which exist as to the rights and wrongs of the struggle between Henry and Simon. If we may take Louis' judgement at its surface value, it shows that a ruler who was famous throughout Christendom precisely for the virtues of honesty and love of justice, believed that right was overwhelmingly on the side of the king. He believed that Henry was so much in the right that he did not merely establish the royal interpretation of the Provisions of Oxford, as he could have done by the terms of his arbitration, but he swept the Provisions entirely away. He left not the slightest doubt, in the wording of his decision, that he believed Simon to be entirely in the wrong. It may be argued in favour of Simon that the very sweeping nature of Louis' condemnation was itself an admission that the wording of the Provisions was so ambiguous and controversial that he could do nothing with it, and that therefore Simon and his supporters had all along had some justification for their interpretation. This is perhaps true. Louis' position seems to have been that the whole baronial plan of reform was unjustifiable

from the start, on account of the restrictions it imposed on the king. Where Henry had gone wrong, Louis seems to suggest, was in accepting the Provisions at all. Where Simon was wrong, was not so much in his interpretation, as in his original imposition of the Provisions on the king. This may be some extenuation of the policy of Simon after 1258, but the fact remains that the whole policy was unequivocally condemned by the most famous and revered monarch of the age. The fact that Louis was prepared to go so far as to support the Papal release, which Henry had obtained from his oath to keep the Provisions, shows how completely he condemned Simon. When all that is possible has been said in explanation of it, perhaps the most remarkable thing about Louis' judgement in January, 1264, is the severity of its terms.

Most people have condemned Simon for his refusal to accept this judgement. Even Stubbs had little to say in his favour. Bémont thought it was unnecessary to ask if the sentence of Louis was just; it was, to say the least, he suggested, unwise. It left Simon no alternative but submission or war; though on the other hand, in reply to M. Bémont, it seems reasonable to ask whether all the compromise and accommodation in the world would not have offered Simon the same two absolute alternatives in the end. It has recently been argued very strongly that Simon never intended to yield the fundamental principles of the Provisions of Oxford, under any circumstances; that he had made this clear in 1263, and that he believed that his opponents and Louis IX knew it very well. He "had understood that Louis would reshape the details of the baronial plan of reform while observing the underlying principles as fixed and unalterable, beyond discussion." But against this, it can be argued that Simon had not made this point clear either in 1263, or in the agreement of December, 1263, when he had promised to accept the arbitration of Louis king of France, "touch-

ing all contentions and discords between the king and the nobles of the realm, on account of the Provisions of Oxford or other cause.”<sup>10</sup>

Simon must surely have known by now that the dispute between him and the king about the Provisions was not something which could be settled by reshaping details. It was a question of ultimate control over the realm. The fact that on October 17, Henry III had assured a number of barons that “he did not propose in any way to infringe the provisions lately made at Oxford” can hardly have made any difference to Louis’ arbitration. Simon had no strong grounds for believing that Henry’s assertion would bind Louis, given the specific commission of arbitration which the latter actually received. Nor did Henry’s acceptance of the Provisions mean the same thing as Simon’s. It never had included the idea of a council which had power to control the actions of the king over an indefinite period of time. The whole trouble after 1258, we have ventured to argue above, lay precisely in the fact that there was no “form of government consistent with the Provisions of Oxford”; there were only irreconcilable interpretations of ambiguous phrases, attitudes towards the problem of reform which had always been conflicting and had now drifted hopelessly apart. The ultimate issue in this arbitration, with its core in the Provisions, was not the issue of the king’s council but of his sovereignty. And if Simon de Montfort did not realize that when this question came before Louis there was a very clear prospect that the French king would solve it, as the Pope had already solved it, by condemning the Provisions of Oxford themselves, then he can be accused of being deficient in political sense.

The most plausible explanation of his actions seems to be that he accepted arbitration in December, 1263 (he

<sup>10</sup> C.P.R., 1258-65, 294; *Liber de Antiquis Legibus*, 59.

had refused it in the previous February)<sup>11</sup> because his party was at that moment too weak for him to refuse, but that the wholesale condemnation by Louis, even worse than he expected, drove him into rejection and, ultimately, into civil war. If this is true, the whole important episode serves to support strongly the contention that Henry III all along had a certain constitutional justification for his position, and that there was a certain logic in his complaints against the baronial council, which the admirers of Simon de Montfort have been unduly reluctant to admit.

Perhaps at this point a brief word should be said regarding Professor F. M. Powicke's recent interpretation of the period. The great conflict of 1258-65 seems to be discussed by Professor Powicke primarily as a conflict of personalities. The constitutional problems do not receive detailed consideration. The precise terms of the agreement for reform between Henry and the magnates in 1258 are not presented as of crucial importance. The tragic conflict between Henry and Simon de Montfort seems to be regarded as transcending the more limited issues raised by the scope and nature of the reforming programme.

The resulting picture contains some deep truths for all students of the period; but it is possible that it creates difficulties of its own. Earl Simon was, in the words of Professor Powicke, no Bracton.

A man of his kind is not inspired by lofty conceptions of law so much as by the exaltation of the crusader. And disillusionment could come very quickly to knights of his fierce and sensitive type. The best devices could be overthrown by that "mischance" which dogs the heroes of romances. "The barons have much to do. They go to work fiercely. God grant that they succeed. Many heads, many opinions. Novelty breeds discord. Some will seek occasions to exceed the limits of equity." Simon was not a constitutionalist; he was a force. And when the vision faded and mischance came he

<sup>11</sup> *Royal Letters*, II, 242-3.

went on as a dark force. He himself would be the conservator, the director, if need be the autocrat. No wonder that Henry feared him. The young adventurer had become a changed man. As passionate and insistent as ever, he had drunk of the cup held out to him by the strongest and subtlest visionary of his age, and the draught had gone to his head.<sup>12</sup>

After the Provisions of Oxford, the "driving force behind the movement was not a programme but a principle."<sup>13</sup> It was a passion for justice. The dissensions which arose after 1258 were apparently due, not to doubts as to the constitutional validity of the position adopted by the dominant group of reformers, but to a waning of enthusiasm. "The motives of those who stood fast were a mixture of distrust of the king, love of power, and devotion to the Provisions of Oxford. The issue became personal, the issue settled at Evesham. Should Earl Simon or King Henry be the ruler of the land?"<sup>14</sup>

But behind this personal issue, we may venture to suggest, as constitutional historians, there was the problem of the constitutional validity of the action of the reformers. Professor Powicke shows how intractable it was. Simon's mind, he writes, could tolerate no departure from the letter of the new order.<sup>15</sup> But what, we are compelled to ask, was the letter, or rather, what was its meaning? To Henry, Professor Powicke says, it meant co-operation under his lordship; to Simon, it was an order which, if need be, could and should operate without royal co-operation. It is evident that to different people, the new order meant different things; and it is difficult to see how these differences could be reconciled without reference to agreements and documents, even if no one imagined that these contained any self-evident formulae which would impose themselves equally on either side.

<sup>12</sup> King Henry III, 391. The visionary in question was Robert Grosseteste.

<sup>13</sup> *Ibid.*, 394.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, 412.

The fact that Henry's and Simon's views on this issue of the new order were widely, and in the end, hopelessly divergent, does not mean, perhaps, that the legal and constitutional issues could be dispensed with, and the argument conducted on a higher plane of ethics and moral obligation. Neither the monarch nor the magnate of the thirteenth and fourteenth century usually acted in this manner, and there are some grounds for believing that neither Henry nor Simon de Montfort was an exception to the rule.

Henry III's famous complaints of 1261, about the conduct of the barons, revealed, Professor Powicke concludes, a complete realization on both sides of the nature and bearing of the recent changes.<sup>16</sup> Perhaps, as suggested above, they went deeper. They were an absolute and unequivocal challenge to the new order. They express the essence of the royalist position after 1259. In making them Henry was defending, not only his own personal claims, but also the ascendancy of the Crown. After 1261 the importance of personalities diminished, that of constitutional principles increased. The great issue no longer lay between Henry and Simon, but between two diametrically opposed conceptions of political order in the state.

Simon de Montfort's position after 1261 was, Professor Powicke believes, that during all this period the baronial constitution was, in principle, still in being, a moral obligation to which all had sworn; though Simon realized that modifications were necessary, and that agreement must be reached by arbitration.<sup>17</sup> But as Professor Powicke remarks, Simon's proceedings were wrecked by their own logic, for they implied that everybody who withheld the Provisions was a public enemy who had

<sup>16</sup> *Ibid.*, 422.

<sup>17</sup> *Ibid.*, 441.

broken his oath.<sup>18</sup> It is precisely this attitude, perhaps, which has helped to obscure one of the great constitutional debates of English history. Whatever it has achieved for Simon de Montfort and the reformers of 1258, it is possible that it has detracted in some measure from the dignity and significance of the crisis of 1258-65 as a whole.

It is true that we cannot solve the details of this problem at this distance of time. The constitutional historian may give undue prominence to his documents. Perhaps Professor Powicke has the constitutionalist in mind when he warns us against the tendency to misread documents because we cannot recapture the spirit in which they were written.

We do not see, [he writes]<sup>19</sup> the lightning that had revealed new seasons; we cannot feel the thrill which had inspired these dead words in brains and hearts long mingled with the dust. We read into their thoughts things they never meant, because we cannot recapture the life in which they moved. Or, worse still, indeed, far worse, we do not see that in the stress of circumstance these dim and fugitive thinkers gave new meaning to truths deeper than those of any one constitutional theory. We do not enlarge but narrow the significance of these men when we praise them because

<sup>18</sup> *Ibid.*, 441. The attitude of both parties seems to be illustrated by an episode on the eve of the outbreak of war. Five bishops approached Henry at Oxford, from the barons. If they are correctly reported, they told him that the barons would accept St. Louis' award if Henry would grant (*remittere*) just one article. But the article was that, dismissing foreigners; he would be guided (*gubernetur*) by "natives." It may be that the bishops did not really mean this. They meant only that Henry should waive one clause of St. Louis' award of January 1264. In this, Louis had annulled that "statute" which said England should in future be governed by "natives." This clause is what the barons wished to have annulled. (See Pauli, *Simon de Montfort*, trans. by U. M. Goodwin (London, 1876), 132-3; Powicke, *King Henry III*, 458-9.) But it is not clear that they did ask this. We cannot be certain, for a variety of reasons. All we can be sure of (*Annales Londonienses*, in *Chronicles of Edward I and Edward II*, ed. by W. Stubbs (R.S., 1882), I, 61), is that, on the evidence available, they asked that Henry should be guided or directed by his own subjects. They asked for a continuation of their control over the king, the very thing for which a civil war was about to be fought. This, it has been argued above, was not far from Simon de Montfort's attitude throughout. If he obtained this one article he could well afford to accept all the other clauses of St. Louis' award.

<sup>19</sup> *Ibid.*, 471.

they said something which would have satisfied Locke or struck a congenial chord in the soul of Rousseau.

In any case, we do well to take his admonition very much to heart. We may be grateful for his insistence on the larger vision. Whether or not he himself has given sufficient consideration to the constitutional issue is possibly a matter of opinion. There still seems to be a case for believing that, in the days of Simon de Montfort, as now, vision and mysticism and idealism have finally to be translated into agreements, forms of procedure, and practices of government. The documents at the end of this chapter express the hopes and ideals of the great age of Simon de Montfort, brought to the acid test of realities, tempered by discords and quarrels, toned down by obstacles and compromises. We cannot recapture the life which lay behind them; but they still have to be translated and, as far as possible, understood. The constitutional historian can afford to be second to none in insight and sympathetic imagination. What has been offered above gives only a brief part of the great drama of Henry III. Much, very much, will have to be sought elsewhere by the student. But we may still venture to believe that what is here represents a not unimportant part.

Documents X, XI, and XII form part of the evidence for the most important attempt, by Simon, to set up a stable government after his defeat of Henry at the Battle of Lewes. These efforts are of great importance. They throw additional light on Simon de Montfort's aims. They help us to estimate how far the reforming ideas of 1258 and 1259 persisted until 1265. They make it possible to guess whether there was any real hope of a permanent settlement of England, under Simon de Montfort's control and leadership, after the Battle of Lewes, or whether, as has already been suggested by the arguments above, nothing could ever bring England back to

peace and stability after the Provisions of Oxford except some sort of recognition, once more, of the paramountcy of the ruler, some formal rejection, comparable to that of the Mise of Amiens, accepted by all parties, of the revolutionary baronial ideal of imposing a permanent control over the king in the interests of a plan of reform.

The first recorded attempt at settlement was made in the *Compromissio* or Agreement to Arbitrate (Document XI), which was recorded by Rishanger, immediately after his description of the Battle of Lewes, and was called the "Agreement of Peace after the Battles of Lewes." It is indeed, the sort of document which might well have come out of the negotiations for arbitration which we know to have been set on foot immediately after the battle. Certain arbitrators were named in it, including the Papal Legate, with certain limitations on their freedom of action. They were to elect councillors for the king, but the councillors were to be Englishmen and their power was to be limited. The king was to "use their counsel and to give credence to them in the exhibition of justice to all," and in the appointment of his officials; he was to do the same in the observance of the ancient charters; and the councillors were to "provide" that the king did not incur immoderate expenses or indulge in extravagances until he was free from his debts. In these things, the king was to "acquiesce in the award and provision made by the councillors." The arbitrators were not to meddle in the question of the delivery of captives; but, after the agreement had been confirmed, the hostages of peace were to be released. If the arbitration failed, Rishanger's copy says, the form of peace lately presented to the king of France by the Master of the Temple was to hold good.

Following the *Compromissio*, was another and more famous attempt at a settlement of the country, known as the *Forma Regiminis*, made popular in the pages of

Bishop Stubbs. This was agreed upon in the "parliament" of June, 1264. It was essentially a temporary expedient, to last "until the Peace made between the king and the barons at Lewes, in the form of a certain Mise, shall be completed"; and it arranged for the election and nomination of three electors to reform the state of the kingdom (not the king) of England. Who should elect or nominate these electors it does not say. The chief duty of the electors was apparently the nomination of nine councillors, whose duties were carefully defined. By their counsel, the king was to ordain and dispose of the custody of castles and of the business of the realm, and to appoint officials concerned with the court and the realm. The king was to act in these things with their advice, or they were to act in them in place of and by authority of the king. All councillors and officials were to swear that they would fulfil their offices to the advantage of the realm as well as of the king. Councillors were to be changed, by the king, but with the advice of the electors. The electors were to be changed by the king with the advice of the community of prelates and barons; but the initiative had, apparently, to come from the community and not from the king.

The *Forma Regiminis* was intended to last only until the *Compromissio* or some similar instrument of peace could be put into effect. A great effort was made to arrive at a permanent settlement in negotiations at Canterbury during the following August. The scheme of arbitration was apparently still the *Compromissio* of Rishanger, with minor changes to bring it up to date. The greatest change was this, that if the arbitration failed again, this time the Peace of Canterbury was to prevail. What was this Peace? Mr. Denholm-Young has shown us that it was almost certainly the whole document which Stubbs printed in his *Select Charters*, including the *Forma Regiminis*, and beginning "This is the form of

peace harmoniously and universally approved by the king, by Edward his son, by the prelates and all the magnates, and by the community of the realm." What the king and all the community did, possibly at Canterbury, was to agree that if the new effort at arbitration failed, then the temporary *Forma Regiminis* should become semi-permanent as a form of government, to last into the reign of Edward I.<sup>20</sup>

This is not the accepted interpretation of these documents. Mr. Denholm-Young has adopted a somewhat different one, endorsed by Professor Powicke.<sup>21</sup> For instance, he has argued that the *Compromissio* recorded by Rishanger at the time of Lewes belongs really to the negotiations at Canterbury in the following August. It was, he points out, officially recorded in the Patent Rolls, amongst the documents associated with these negotiations. Minor changes were made in it, which are indicated in the translations below. One of these changes refers to a form lately presented to the king of France by the Master of the Temple, which was to stand if the arbitration failed.<sup>22</sup> This change is significant, Mr. Denholm-Young argues, because a letter in favour of the Master of the Temple, addressed to the king of France, was actually entered in the Patent Rolls under the date August 15. This, together with the place of the *Compromissio* in the

<sup>20</sup> The situation was, in fact, not quite so simple as this, as is made clear by entries in the Patent Roll, recorded below. A detailed discussion of these would, however, fall outside the scope of this volume. Various committees were set up, or contemplated, at Canterbury, to bring about a settlement. The *Compromissio* was only a basis for discussion. But it is very hard to believe, as has been suggested, that Simon de Montfort tried to get Louis IX's consent to the *Forma Regiminis* as the scheme for a permanent government, without any form of arbitration at all.

<sup>21</sup> It is with deep hesitation that I suggest the possibility of an interpretation different from that adopted by both the scholars mentioned above. Nor does space permit me to give the problem (as others both before and after) the space it deserves. Students are again reminded that the main purpose of this short work is to stimulate further reading and provide some little material for judgement. The recent writings of Professor Powicke and Mr. Denholm-Young are listed above.

<sup>22</sup> Rishanger's alternative reading is given below.

official records, seems to fix its true date not as Rishanger suggested, soon after the Battle of Lewes, but rather about August 15. It certainly does fix the date of this redaction of the *Compromissio* as being some time in August. Yet the most significant fact of all, relative to this copy, whose existence Mr. Denholm-Young has so fortunately emphasized, may be that there were two redactions of the *Compromissio* and not only one. Their wording, as shown below, is not the same. Nor, as far as our evidence will take us, were they employed at the same time. Thus there is a case (though not by any means a conclusive case) for believing that two attempts existed, and not one only, to put the *Compromissio* into force. One attempt would be soon after Lewes; the other would be during the negotiations at Canterbury in August, 1264. This view involves difficulties of its own; but it enables us to accept the story of a chronicler who was intimately acquainted with the events he narrated and whose reputation in connection with this period is deservedly high.

The *Compromissio* of Rishanger has not usually been regarded as suitable for a more than temporary agreement to end the fighting after Lewes. Yet we must remember that, on the one hand, it formed only part of the negotiations at Canterbury and in France during August; on the other hand, it did contain within itself the germs of a permanent settlement. The arbitrators were to act for the reformation of the state of the realm and of the king. They were to elect councillors who would have fairly definite powers; Henry had to acquiesce in their award and provision in some things and to accept their counsel in many others. It is true that this form of government was possibly less finished and logical than the purely temporary *Forma Regiminis*; but it may nevertheless have been much more acceptable to the nation as the core of a solution to the problem of peace.

The three electors of the *Forma* were not acceptable, and never could be made to be so. Their large degree of control over the personnel of the council made them a standing challenge to the royal power. The arbitrators of the *Compromissio* had no such functions. The essence of this scheme was the council. This seems to have been based on the council of fifteen of the Provisions of Oxford; but this time the council was not necessarily to be baronial, and its functions were carefully and moderately defined. It seems clear that the *Compromissio* could have been intended to form the basis of a permanent settlement, both in August and earlier in the year. In so far as it did so, we must modify the conclusion that the Peace of Canterbury was stiffer than the Mise of Lewes. The two "peaces" seem, in fact, to have been very much the same.

It remains to be seen what the constitutional significance of these documents is, in the order which has been suggested above. The *Compromissio* of Rishanger is, on the whole, a tribute to the moderation of Simon in his hour of victory, and of his sincere desire for a lasting settlement of the dispute between himself and the king. At the same time, it shows him stubbornly persevering in the attempt to place effective restrictions on the power of the ruler, through a nominated council. Finally, it seems to show the impossibility of solving the constitutional problem on this conciliar basis, in the second half of the thirteenth century. Simon did not give his new councillors quite the power over Henry which he had claimed all along for the council of fifteen set up by the Provisions of Oxford. The executive was clearly left under the control of the king. This was a nice adjustment, if it could be accomplished; but it can fairly be said, in this case, to have invited a political deadlock, in view of the certain hostility which would exist between the council and the king. The scheme, to be workable,

demanded harmony and co-operation between the king and the barons, and this was exactly what would not be forthcoming. But any scheme which Simon could have devised, which would not have outraged the political traditions of the nation by attempting to dispense with the royal power altogether, would have depended on the same, almost impossible condition for success. That had always been the crux of Simon's problem. He could not destroy the monarchy and yet, if he left it uncontrolled, the monarchy, faced by his tremendous challenge, would destroy him. He had to attempt a control over the king; but so far-reaching were the powers of the ruler, and so concentric was the whole system of government, still so dependent on the personal action of the monarch, that any system of partial control was bound, in the long run, to be ineffective, without the good wishes and co-operation of the king. It was perhaps this, rather than the unwillingness of the arbitrators or the difficulty of getting them together, which made it impossible to obtain a settlement after the Battle of Lewes and even after the negotiations at Canterbury in the following August and September. Where Louis IX and the Papal Legate had failed, even before Lewes, no group of arbitrators could really hope to succeed.

Failing this settlement, Simon had to fall back on the *Forma Regiminis* as the other alternative. He had already taken the precaution of introducing this to Louis IX, and he could claim that, all arbitration having failed, this was the settlement to which all the nation and all interested parties, both English and French, had agreed. Granted Simon's difficult position, the *Forma* provided a not unreasonable settlement. Indeed its clauses were perhaps more restricted than appears at first sight, in the extent to which they entrenched on the power of the king, though explicit enough in the authority they gave to the council to act instead of the monarch, if he dis-

regarded its advice. Henry was only to take the advice of the council of nine in the disposal of castles, in the business of the kingdom, and in the appointment of officials. Nothing was said of the business of the king. Apparently the king was free to take whatever advice he liked in matters which were traditionally considered to concern only himself, except the custody of castles.

How much significance to attach to this wording, it is difficult to say. It is possible that the old distinctions between different kinds of governmental acts were beginning to lose some of their importance. Moreover, we have no clear indication as to how much was retained at this time from the Provisions of Oxford, and from the system for which they stood. Henry is said to have accepted the Provisions (to be modified by arbitration) after the Battle of Lewes. M. Bémont has suggested that this system was probably still regarded as binding. Parts of the system were no doubt now generally accepted, but these did not include government by council. It seems likely that there was some attempt in the schemes of 1264 to meet the grave objections Henry had made about the powers of the council after 1259, and to conciliate Louis IX. If, in the end, neither scheme proved satisfactory and acceptable to the nation, the cause lay not so much in Simon's policy as in the difficulties of the situation he was called upon to face. It remains true, however, that those difficulties were all along partly of his own making. They came from an ignorance or disregard, on his part, of the fundamentals of the English constitution, of the nature and powers of the monarchy, and of the limitations which these imposed on the scope of any reforming movement in the middle years of the thirteenth century.

Of the royalist restoration of 1265-67, illustrated by the last document in this section, the Dictum of Kenilworth, little need be said in addition to what has been

said elsewhere. The Dictum, or Award, provided that the king should freely have and exercise his dominion, authority, and royal power. Any grants made by the king of his own free will, and not under compulsion, were to be kept; but what this amounted to, it is impossible to say. As far as the extant documents will take us, the royalist restoration after the Battle of Evesham seems to have been complete; but of course, as pointed out elsewhere, it was impossible, especially in view of the widespread support which Simon had received over so many years, and of the state of the country for many months after August, 1265, to go back entirely, or perhaps even largely, to the situation which had existed before the Provisions of Oxford. The period of the Barons' War against Henry III was one of the most formative and remains, despite the mistakes of the magnates, perhaps inevitable in any such movement, one of the most inspiring in English medieval history; but an evaluation of its permanent contribution to the constitution does not fall within the limits of these introductory remarks.

This much, however, does seem fairly certain. The political struggle centred on the council and not on parliament because the latter was still too unformed and undeveloped to provide a suitable instrument for the opposition. The great parliamentary struggles were to be waged in the fourteenth century. The council did provide such an instrument. Although it was still essentially an advisory body, the line between advising and controlling the ruler was uncertain. This accounts for much of the ambiguity of the Provisions of Oxford. The attempt to achieve control through the council was possible in 1258; but it involved a frontal attack on the supremacy of the Crown and was not likely, in the long run, to be successful. Thus the struggle between Henry III and Simon de Montfort involved much more than personalities. It was brought on by a consistent effort

on the part of the former to interpret the established political traditions in a sense unduly favourable to the Crown. Henry attempted a dangerous extension of the royal powers. Simon sought, almost inevitably, to go too far in the opposite direction. His measures however temporary their nature, would have gravely threatened the necessary ascendancy of the monarch in the state. The time was not yet ripe for them to be successful. Men still needed, and believed in, an undivided, royal control over the executive. The result was, in the end, a compromise between Henry and his subjects. The king retained his ancient supremacy; the "nation" asserted its right to its old co-operation. This was an unexpressed but probably not unrecognized triumph of the fundamental political concept of government by counsel and consent. The final outcome was a transformation of the key institution of parliament. This concept and this institution were to lie at the heart of the great effort at political reconstruction undertaken by Edward I.

(c) *Documents*

- I. Complaints of the barons in 1248.
- II. Henry III's consent to proposed reforms, May, 1258.
- III. Henry III's letter agreeing to reforms to be made by the Twenty-four, May, 1258.
- IV. The Provisions of Oxford, June, 1258.
- V. Protest of the *Communitas Bacheleriae Angliae*, 1259.
- VI. The Provisions of Westminster (or Oxford), 1259.
- VII. Negotiations about the Provisions of Oxford, July, 1263.
- VIII. Agreement of Henry III to the Arbitration of St. Louis, 1263.
- IX. Arbitration of Louis IX: The Award, 1264.

- X. The documents in the Patent Roll (*C.P.R.*, 1258-66, 369-71) relevant to the negotiations after Lewes and at Canterbury, 1264.
  - XI. The *Compromissio* copied by Rishanger in his chronicle *De Bellis Lewes et Evesham*, and recorded in the Patent Rolls.
  - XII. The Form of Peace, including the *Forma Regiminis*, 1264.
  - XIII. The Dictum of Kenilworth, 1266.
- I. Complaints of the barons in 1248.

A fortnight after the feast of St. John the Baptist in the month of June [June 24], there assembled in London the nobility of the whole of England, firmly believing from the king's certain promise that he would have changed his erroneous ways, gotten to himself grace by divine influence, and would incline himself to wiser counsels. Therefore when there had gathered together into one body all the magnates of the realm, the king gave an unmannerly reply as follows: "You have wanted, all you leading men of England, and not particularly politely either, to bend your lord the king to your own will, and to impose on him a much too servile condition whenever he refuses any of your requests. Furthermore any man may make use of whatever counsel he likes and from whomsoever he likes, and every head of a household may place in office or defer or even depose anyone he chooses of his household; but yet you have boldly presumed to deny this to your lord king, though least of all ought servants to judge their masters and vassals their prince. Nor ought they to rope him in with conditions. Nay, rather are they bound to be directed by their lord's will and be set in order according to his wish, since they are accounted inferior to him. 'For the servant is not above his lord, nor the disciple above his master' (St. Matthew, x, 24). And he would be not as your king, but

as a servant, if he were to bend thus to your will. Therefore he will neither remove nor find substitutes for chancellor, justiciar, or treasurer, as you have proposed to arrange." A like answer was given in a mocking way to the other articles, sufficiently serviceable to the king though they were. "But he demands from you pecuniary aid to gain beyond seas his rights, which matter to you also." [Aid was refused and the king was obliged to make money by selling his plate.]

—From Matt. Paris, *Chron. Maj.*, V, 20.

## II. Henry III's consent to proposed reforms, May, 1258.

The king to all etc. We caused the great and loyal men of our realm to be summoned before us at London a fortnight after last Easter, concerning our arduous business, touching us and our realm. We treated diligently with them, concerning the above business and especially concerning the prosecution of the Sicilian business; and they told us that if we would be led to rectify the state of our realm by the advice of our loyal [subjects], and if the lord Pope would improve the conditions which had been laid down in the matter of Sicily, so that we might carry out the business with effect, they would loyally apply their zeal to the community of our realm to the end that a common aid should be offered to us for the matter.

We have accordingly conceded that we will ordain concerning the state of the kingdom, before next Christmas, with the advice of the eminent and loyal men of our kingdom of England, together with the advice of the Legate of the lord Pope if he shall come to England in the meantime. And we place ourselves under the coercion of the lord Pope, in the loyal observance of this [promise], so that he can compel us by ecclesiastical censure, as may seem fitting.

We avow also that Edward our eldest son has taken an oath and declared by letter that, as far as in him lies, he will faithfully and inviolably observe, and forever cause

to be observed, all that is set forth above. In testimony of which, etc. Witnesses Edward our eldest son; Geoffrey de Lusignan, William of Valence our brothers; Peter of Savoy, John of Plessis Earl of Warwick, John Mansel treasurer of York, Henry of Wengham dean of St. Martin's London; Peter of Rivaux, Guy of Rocheford, Robert Walerand; there being present also many other earls and barons of our realm. Given at Westminster 2, May.

—From Rymer's *Foedera*, I, 371; printed in S.C., 371-2.

### III. Henry III's letter agreeing to reforms to be made by the Twenty-four, May, 1258.

The king to all, etc. You are to know that, through an oath given on our behalf by Robert Walerand, we have granted to the nobles and magnates of our kingdom that, by twelve faithful men of our council already elected and by twelve other faithful men of ours elected on the part of those nobles, who are to convene at Oxford one month after the feast of Pentecost next, the state of our kingdom shall be ordered, rectified, and reformed according to what they shall think best to enact for the honour of God and our faith and the good of our kingdom. And if, perchance, any of those elected on our part are absent, those who are present shall be permitted to substitute others in place of the absentees; and the same shall be done [with regard to those elected] on the part of the aforesaid nobles and faithful men of ours. And whatever is ordained in this matter by the twenty-four elected by both sides and sworn to the undertaking, or by the majority of them, we will inviolably observe, wishing and henceforth straitly enjoining that their ordinance be inviolably observed by all. And whatever security those men, or the majority of them, may provide for the observance of this matter we will fully grant and cause to be granted. We also attest that Edward, our first-born son, through an oath personally taken, has by his letters granted that he

will faithfully and inviolably observe, and will cause ever to be observed, all that has been expressed and granted above, so far as in him lies. Furthermore, the said earls and barons have promised that, on the completion of the business noted above, they will strive in good faith to see that a common aid is rendered to us by the community of our kingdom. In testimony whereof, etc. . . . Given at Westminster, May 2.

—From Rymer's *Foedera*, I, 371; printed in *S.C.*, 372.

#### IV. The Provisions of Oxford, June, 1258.

It has been provided that from each county there shall be elected four discreet and lawful knights who, on every day that the county [court] is held, shall assemble to hear all complaints touching any wrongs and injuries inflicted on any person by sheriffs, bailiffs, or any other men, and to make the attachments that pertain to the said complaints [for keeping] until the first arrival of the chief justiciar in those parts; so that they shall take from the plaintiff adequate pledges for his prosecution [of the case], and from the defendant for his coming and standing trial before the said justiciar on his first arrival; and that the four knights aforesaid shall have all the said complaints enrolled together with their attachments in proper order and sequence—namely, for each hundred separately and by itself—so that the said justiciar, on his first arrival, can hear and settle the aforesaid complaints singly from each hundred. And they shall inform the sheriff that they are summoning all his hundredmen and bailiffs before the said justiciar on his next arrival, for a day and a place which he will make known to them: so that every hundredman shall cause all plaintiffs and defendants of his bailiwick to come in succession, according to what the aforesaid justiciar shall bring to trial from the aforesaid hundred; also as many men and such men—both knights and other free and lawful men—as may be

required for best proving the truth of the matter. [This, however, is to be done] in such a way that all are not troubled at one and the same time; rather let [only] as many come as can be [used in cases to be] tried and concluded in one day.

Likewise it is provided that no knight of the aforesaid counties, by virtue of an assurance that he is not to be placed on juries or assizes, shall be excused by a charter of the lord king or be exempt from [the obligations of] this provision thus made for the common good of the whole kingdom.

Elected on the part of the lord king: the lord Bishop of London; the lord Bishop Elect of Winchester; the lord H[enry], son of the king of Germany; the lord J[ohn], Earl de Warenne; the lord Guy de Lusignan; the lord W[illiam] de Valence; the Lord J[ohn], Earl of Warwick; the lord John Mansel; Brother J[ohn] of Darlington; the abbot of Westminster; the lord H[enry] of Hengham.

Elected on the part of the earls and barons: the lord bishop of Worcester; the lord Simon, Earl of Leicester; the lord Richard, Earl of Gloucester; the lord Humphrey, Earl of Hereford; the lord Roger Marshal; the lord Roger de Mortimer; the lord J[ohn] Fitz-Geoffrey; the lord Hugh le Bigot; the lord Richard de Gray; the lord W[illiam] Bardulf; the lord P[eter] de Montfort; the lord Hugh de Despenser. And if it should happen that of necessity any of these cannot be present, the rest of them shall elect whom they please in place of the absentee, namely, another person needful for carrying on that business.

Thus swore the community of England at Oxford . . .

This is the oath [administered] to the twenty-four . . .

Thus swore the chief justice of England . . .

This is the oath taken by the wardens of the castles . . .

These are the men sworn [to be] of the king's council . . .

The twelve on the king's side have chosen from the twelve on the side of the community the Earl Roger Marshal and Hugh le Bigot. And the party of the community has chosen from the twelve who are on the side of the king the Earl of Warwick and John Mansel. And these four have power to elect the council of the king; and when they have made the election, they shall designate those [elected] to the twenty-four. And that shall hold on which the majority of these [four] agree.

These are the twelve who have been elected by the barons, on behalf of the whole community of the land, to consider common needs along with the king's council at the three annual parliaments . . .

These are the twenty-four appointed by the community to consider aid for the king. . . . And if any one of these cannot or will not be present, those who are present shall have power to elect another in his place.

Concerning the state of Holy Church:—It should be remembered that the state of Holy Church is to be amended by the twenty-four chosen to reform the state of the kingdom of England—at what time and place they think best, according to the powers that they hold by writ of the king of England.

Concerning the chief justice:—[It has been decided] furthermore that a chief justice—or two [chief justices]—shall be appointed; also what power he shall have; and that he shall be [in office] for only one year, so that at the end of the year he shall render account of his term before the king and the royal council and before the man who is to follow him [in office].

Concerning the treasurer and the exchequer:—The same [has been decided] with regard to the treasurer; so that he shall render account at the end of the year. And according to the ordinance of the said twenty-four, other

good men are to be appointed to the exchequer, whither all the issues of the land are to come, and not elsewhere. And let that be amended which seems in need of amendment.

Concerning the chancellor:—The same [has been decided] with regard to the chancellor; so that he shall render account of his term at the end of the year, and that merely by the king's will he shall seal nothing out of course, but shall do so by [the advice of] the council that surrounds the king.

Concerning the household of the king and queen:—It should be remembered to reform the household of the king and queen.

Concerning the parliaments, as to how many shall be held annually and in what manner:—It should be remembered that the twenty-four have ordained that there are to be three parliaments a year: the first on the octave of St. Michael, the second on the morrow of Candlemas, and the third on the first day of June, that is to say, three weeks before [the feast of] St. John. To these three parliaments the chosen councillors of the king shall come, even if they are not summoned, in order to examine the state of the kingdom and to consider the common needs of the kingdom and likewise of the king; and by the king's command [they shall come] also at other times, whenever it is necessary. So too it should be remembered that the community is to elect twelve good men, who shall come to the three parliaments and at other times, when there is need and when the king and his council summon them to consider the affairs of the king and of the kingdom. And [it has been decided] that the community shall hold as established whatever these twelve shall do—and this is to reduce the cost to the community. Fifteen are to be named by these four men—that is to say, by the Earl Marshal, the Earl of Warwick, Hugh le Bigot, and John Mansel—who have been elected by the twenty-four to

name the aforesaid fifteen, who are to form the king's council. And they are to be confirmed by the aforesaid twenty-four, or by the majority of those men. And they shall have the power of advising the king in good faith concerning the government of the kingdom and concerning all matters that pertain to the king or the kingdom, and in order to amend and redress [*E pur amender et adrescer*] everything that they shall consider in need of amendment or redress. And [they shall have authority] over the chief justice and over all other people. And if they cannot all be present, that shall be firm and established which the majority of them shall enact.

These are the names of the principal castles of the king, and those who have charge of them. . . .

—From the *Annals of Burton*, in *Annales Monastici*, I, 446-53; printed in S.C., 378-84.

#### V. Protest of the *Communitas Bacheleriae Angliac*, 1259.

On the feast of St. Edward . . . royally celebrated by the lord king at Westminster, the community of the Bachelors of England made known to lord Edward, son of the king, to the Earl of Gloucester and others sworn of the council at Oxford, that the lord king had completely performed and fulfilled all and singular that the barons had ordained and constrained him to do; and that the barons themselves had done nothing of what they had promised for the good of the realm, but only for their own good and to the harm of the king everywhere, and that unless a remedy were provided for this, the agreement [at Oxford?] would be restored in another fashion. The lord Edward immediately promised on his own behalf that he had taken a certain oath at Oxford, although he was unwilling, but that he was not, on this account, less prepared to stand willingly by the said oath, and to expose himself to death for the community of England and for the advantage of the state, according

to what he had sworn at Oxford; and he clearly informed the barons sworn of the council that unless they fulfilled their oath, he would stand to the death with the community and cause those promises to be fulfilled. At length the barons seeing that it was better to have their promises fulfilled by themselves than by others, caused their provisions to be publicly promulgated.

—From the *Annals of Burton*, in *Annales Monastici*, I, 471; printed in *S.C.*, 331.

## VI. The Provisions of Westminster (or Oxford), 1259.

In the year 1259 from the Incarnation of the Lord, the forty-third of the reign of King Henry, son of King John, at a meeting of the lord king and his magnates at Westminster on Michaelmas fortnight, the provisions hereinunder written, by the common counsel and consent of the said king and his magnates, were enacted and published by the same king and his magnates in this form:—

1. With regard to the performance of suit to the courts of the magnates and of other lords who have such courts, it is provided and established by general agreement that no one who is enfeoffed by charter shall henceforth be distrained to perform suit to his lord's court, unless he is specifically obliged by the tenor of his charter to perform the suit; with the sole exception of those whose ancestors were accustomed to perform suit of this kind, or who themselves [were accustomed so to do], before the first crossing of the said lord king into Brittany —after the time of which crossing twenty-nine and a half years had elapsed down to the time that this constitution was made. And likewise no one enfeoffed without charter since the time of the Conquest, or by other ancient enfeoffment, shall be distrained to perform suit of this kind, unless he or his ancestors were accustomed to perform it before the first crossing of the lord king into Brittany. . . .

4. With regard to the sheriff's tourn, it is provided that, unless their presence is specially demanded, arch-

bishops, bishops, abbots, priors, earls, and barons, or members of religious orders or women, shall not of necessity come thither. . . . And the tourns shall be held according to the form of the king's Great Charter, and as they were customarily held in the time of the kings John and Richard.

5. It is also provided that neither on the eyres of the justices nor in the [courts of the] counties nor in the courts of barons shall fines henceforth be taken from anybody for miskenning, or for avoidance of trouble on that score. . . .

8. Moreover, with regard to charters of exemption and liberty, [to the effect] that those securing them are not to be put on assizes, juries, or recognitions, it is provided that, if their oath is so essential that without it justice cannot be administered . . . , they shall be forced to swear, saving to them their aforesaid liberty and exemption in other respects. . . .

11. Henceforth no one except the lord king and his ministers shall be permitted, for any cause whatsoever, to levy distraints outside his fief, or on a royal or a common highway. . . .

16. Hereafter no one but the king shall hold in his court a plea concerning false judgement rendered in a court of his tenant; for pleas of this sort especially pertain to the crown and dignity of the king. . . .

18. Without the king's writ, no one may henceforth distrain his free tenants to respond concerning their free tenements or anything that pertains to their free tenements. Nor may he cause his free tenants against their will to take oaths: so that no one may do this without the king's precept. . . .

—From the *Statutes of the Realm*, I, 8-11; printed in S.C., 390-94.

## VII. Negotiations about the Provisions of Oxford, July, 1263.

Afterwards they [Simon and his supporters] sent a letter to the citizens of London, about the feast of St.

John, under the seal of Simon de Montfort, the Earl of Leicester, wishing to be certified by them "whether they wished to observe the ordinances and statutes, made for the honour of God, the faith of the lord king, and the advantage of the whole realm, or whether they would rather cleave to those who wished to infringe them." And you should know that such was the petition of the Barons [of London].

*Concerning the Petition of the Barons for the observance of the said statutes*

The Barons humbly and devoutly petition the lord king that the statutes and ordinances made at Oxford and confirmed by the oath both of the lord king and of the magnates, and subsequently of all and singular of the whole realm of England, shall be firmly and inviolably observed.

With this reservation, however, that if there should be found anything in them, by the consideration of good men elected for this purpose, prejudicial or harmful to the lord king or to the kingdom, it shall be entirely taken out; and if there are any things which are obscure or need amending, they shall be cleared up or corrected; and security shall be given for the perpetual observance firmly of the other matters [in the Provisions], namely those that are useful and good.

Then they petition that the realm shall in future be governed, under the lord king, by loyal and useful born Englishmen, and not by strangers, just as is commonly done in all other kingdoms in the world.

Which mandate the citizens showed to the lord king, then in the Tower, to the King of Germany, to the Queen, to lord Edward and Robert Walerand, then also present; and they said that all the Community wish to observe those statutes, which are to the honour of God, the faith of the king, and the benefit of the realm; which statutes

had been affirmed before by the aforesaid Community, by oath, on the command of the king. . . .

—From the *Liber de Antiquis Legibus*, 53.

### VIII. Agreement of Henry III to the arbitration of St. Louis, 1263.

The king, to all etc., greetings.

You shall know that we have agreed on the arbitration of lord Louis, the illustrious king of France, concerning the provisions, ordinances, statutes and all the obligations of Oxford, and concerning all strife and discords which we have had and have, up to the feast of All Saints just past, [Nov. 1st] against barons of our kingdom, and they against us, by occasion of the provisions, ordinances, statutes or obligations aforesaid of Oxford.

We promise, and swear on the Gospels, through our chosen and faithful knight William Biset and clerk Robert Fulton who take the oath, by our special command, in our place, that we will observe on good faith whatever the said king of France shall ordain or decree concerning all the aforesaid matters, or any of them, high or low, with the reservation only that the said lord king of France gives his decision about them before Whitsuntide next . . . [Prince Edward and a number of magnates promise alongside him] . . . Given at Windsor, the Sunday after the feast of St. Lucy the Virgin, [Dec. 16], 1263.

—From the *Royal Letters of Henry III*, II, 251-2; taken from Rot. Pat. 48, Henry III, m. 18.

### IX. Arbitration of Louis IX: The Award, 1264.

. . . In the name of the Father and the Son and the Holy Spirit. By our [present] decision or ordinance we quash and annul all the aforesaid provisions, ordinances, statutes, and obligations, however called, and whatever has followed from them or by occasion of them, especially since it appears that the supreme pontiff by his letters has proclaimed them quashed and annulled; ordaining

that as well the said king as all the barons and others who have consented to the present arbitration, and who in any way have bound themselves to observe the aforesaid [provisions], shall be utterly quit and absolved of the same. We likewise add that, by virtue or force of the aforesaid provisions or obligations or ordinances, or of any authority already granted by the king on that account, no one shall make new statutes or hold or observe those already made; nor ought any one, through non-observance of the aforesaid [provisions], to be held the enemy, either principal or otherwise, of any one else, or for that reason incur any penalty. . . . We also decree and ordain that the aforesaid king at his own volition may freely appoint, dismiss, and remove the chief justice, chancellor, treasurer, counsellors, lesser justices, sheriffs, and any other officials and ministers of his kingdom and his household, as he was used and able to do before the time of the provisions aforesaid. Furthermore, we repeal and quash the statute made to the effect that the kingdom of England should henceforth be governed by natives and that all aliens should leave the kingdom, never to return, except those whose residence the faithful men of the kingdom commonly agreed to, ordaining by our decisions that aliens may safely remain in the said kingdom, . . . may safely call to his counsel such aliens and natives as shall seem to him useful and loyal, just as he was able to do before the time aforesaid. Likewise we declare and ordain that the said king shall have full power and unrestricted rule within his kingdom and its appurtenances, and shall in all things and in every way enjoy such status and such full power as he enjoyed before the time aforesaid. By the present ordinance, however, we do not wish or intend in any way to derogate from royal privileges, charters, liberties, establishments and praiseworthy customs of the kingdom of England existing before the time of the same provisions. . . .

Now this our ordinance or decision we have promul-

gated at Amiens on the morrow of the blessed Vincent the Martyr, A.D. 1264, in the month of January [January 23]. In testimony whereof we have caused our seal to be attached to the present letters.

—From Rymer's *Foedera*, I, 433-4; printed in *S.C.*, 395-7.

X. The documents in the Patent Roll (*C.P.R.*, 1258-66, 369-71) relevant to the negotiations after Lewes and at Canterbury, 1264.

(1) Thursday after Nativity [September 11], Canterbury.

Power to Henry Bishop of London, Hugh Despenser justiciar, Charles Count of Anjou and the Abbot of Bec, or if the Count will not undertake the business, Simon de Claremont, lord of Nesle, or Peter the Chamberlain in his place, and if the four cannot agree, the Archbishop of Rouen shall be associated with them, to examine and amend the form of the peace between the king and the barons; on condition that none but denizens shall govern the realm or have the keeping of any castle or bailiwick; and the king wills that peace shall be made between him and the Earl of Leicester in all personal and special quarrels before such peace be completed: directed to Simon de Montfort, Earl of Leicester, Gilbert de Clare Earl of Gloucester, John Fitz John, John de Burgo senior . . . and the rest of the barons and magnates of England.<sup>1</sup>

<sup>1</sup> Compare an earlier entry on a schedule of P.R. (*C.P.R.*, 1258-65, 347). "Because it is requisite that it be known that the peace which is agreed between the king and his barons is provided in good faith, the barons will that the Archbishop of Rouen, Sir Peter le Caumberlayn, the Bishop of London and Sir Hugh le Despenser view and hear the causes and reasons for which the form is so agreed. And if these four find it good and reasonable let it stand, and if there be anything to be amended or put right by the award of the four or three of them, let it be amended, and put right, and they swear to do this well and loyally to the best of their knowledge; and good security shall be made that their award and ordinance be firmly kept. And if it be desired that the legate be the fifth to make the award more certain, let him be sent for, but only in case the four or three cannot agree. And it is necessary that it should be understood that no foreigners be of the council or hold any bailiwick in the land and likewise that their award be not published in England. ("*e ensement ke leur dit ne pas for en Engleterre.*" Mr. Denholm-Young thinks this last is a misprint.)

## (2) The Same.

Appointment of W. Bishop of Worcester, J. Bishop of Winchester and Peter of Montfort as king's proctors and envoys to treat in the presence of the King of France and G. Bishop of Sabina, Papal Legate, of the reformation of the state of the realm of England or of referring this to certain persons to be agreed upon, if expedient.

(3) Like letters under the name of the said earls . . . for themselves and the rest of the barons and the commonalty of the realm of England.

(4) Also like letters (dated Saturday after Nativity at Canterbury,) issued in the name of the king, thus:

Be it known that we appoint H. Bishop of London, W. Bishop of Worcester, J. Bishop of Winchester, H. Despenser the justiciar, Peter of Montfort and Richard of Mepham as our proctors and envoys to treat in the presence of L. King of France G. Bishop of Sabina, of the reformation of the realm.

(5) Like letters under the name of said earls and barons for themselves and said commonalty to which they append their seals.

(6) Also the form of peace above written was sealed with the seal of the king and handed to the said envoys. (Then follows the *Forma Regiminis domini Regis et Regni* as printed by Stubbs in *S.C.*, from *Foedera*, I, 443.)

(7) Monday after Exaltation of Holy Cross, Canterbury [September 15].

Also in the form aforesaid proctors were appointed etc. to wit the Bishop of Winchester and Richard of Mepham, to wit, these clauses . . . giving the said archdeacon power to swear on the king's seal.

Also Ralph de Sandwico knight has power to swear on the king's seal that the king will ratify whatever the said bishop and archdeacon shall do in his name in the premises.

(8) It is settled (*actum*). [Then follows the *Compromissio* or *Compositio* given by Rishanger, with variations noted below.]

#### XI. The *Compromissio* copied by Rishanger in his chronicle *De Bellis Lewes et Evesham*, and recorded in the Patent Rolls.

It is settled (*actum*) that for the reformation of the state of the realm and of the king, and for the reconciliation of discords moved or renewed, it shall be referred to G. Archbishop of Rouen, H. le Despenser, justiciar of England, and G. Bishop of Sabina, H. Bishop of London, Peter called the Chamberlain, papal legate, as arbitrators,<sup>1</sup> with full power, saving the underwritten limitation concerning the elections of the king's councillors and saving this that they should not inter-meddle touching the delivery of captives or the manner of their delivery.<sup>2</sup>

The form of the reference is as follows. If three or four of the above agree, their decision shall stand though not accepted by the fifth; and if two only are found to agree, their decision shall not stand until it is approved by the fifth: otherwise the arbitration shall expire.<sup>3</sup> And if the arbitration expire in any manner, the peace shall stand which was lately provided at Canterbury and presented to the king of France, until a better form shall be ordained.<sup>4</sup>

The power of the arbitrators concerning the election of councillors and their nomination and assignment to the king of England consists in this, that they shall elect

<sup>1</sup> These arbitrators are the same as Rishanger, "Compositio Pacis Post Bellum de Lewes," in *The Chronicles of William Rishanger*, ed. by J. O. Halliwell (Camden Society, 1840), 37.

<sup>2</sup> According to R. the arbitrators have the same full powers and saving clause, omitting reference to the election of councillors.

<sup>3</sup> The same in R.

<sup>4</sup> The same in R. except that in R. that form is to stand lately presented to the King of France by the Master of the Temple.

for the king and the realm, councillors from Englishmen and denizens only, such as they shall believe to be most useful and necessary for the king and the realm, and in order that the matter may be free from all suspicion, before they proceed to election or any act of arbitration, having touched or inspected the Holy Gospels, the first four shall swear that they will do these things faithfully.<sup>5</sup> And after they have elected the councillors there shall be no question by the parties of the fitness of the councillors. And provision shall be made in what manner others shall be chosen in the place of those who fail.<sup>6</sup>

The power of the councillors shall consist in the following. The king shall use their counsel and give credence to them in the exhibition of justice to all without exception of persons, and in the creation and appointment of his officials, masters and bailiffs from Englishmen and denizens only.<sup>7</sup> He shall do the same concerning the observance of the ancient charters as well of liberties as of the forest and the articles which heretofore he caused to be published throughout England against oppressions of justices, sheriffs and other bailiffs, for ever for the future.<sup>8</sup> The councillors shall provide that the king shall not make immoderate expenses or exercise extravagant liberalities until he be relieved of his ancient debts and can live of his own, without the grieving of the merchants and the poor, and in these things the king shall acquiesce in the award and provision made by his councillors.<sup>9</sup>

It is decreed that the arbitration be fortified on both sides by such security as the said four arbitrators shall provide in common.<sup>10</sup>

<sup>5</sup> The same in R. but in fewer words.

<sup>6</sup> No reference in R. to the provision for choosing councillors in place of those who fail.

<sup>7</sup> Also in R.

<sup>8</sup> Also in R.

<sup>9</sup> The same in R.

<sup>10</sup> Similar in R.

It is decreed also that after the agreement is fortified and fully confirmed, the hostages of peace shall be released, to wit Sir Edward and Sir H. of Alemain, on condition that before their deliverance they undertake in a fitting manner to observe the peace,<sup>11</sup> and that in any event whereby the arbitration might expire, they will stand by the said peace provided at Canterbury until a better form shall be provided; and that they will not raise new war or discord in the realm, but in conjunction with the other earls wishing to observe peace and arbitration will resist with all their power those wishing to raise war or discord.<sup>12</sup> And this security shall be provided in common by the said four arbitrators and other four men of the realm elected by them, to wit, two prelates and two lay persons most fit for the purpose.<sup>13</sup> . . .

This arbitration shall be "treated" in the realm of England, and be terminated by the feast of Easter next at the latest.<sup>14</sup>

## XII. The Form of Peace, including the *Forma Regiminis*, 1264.

This is the form of peace harmoniously and universally approved by the king, by Edward his son, by the prelates and all the magnates and by the community of the realm; namely, that a certain ordinance made in the parliament held in London at the feast of the Nativity of St. John the Baptist just past shall remain firm, stable and unshaken, to last all the life of the king and also during the lifetime of Prince Edward, when he shall be king, to a point to be

<sup>11</sup> Same in R. After this, however, R. omits "and that in any event whereby the arbitration might expire they will stand by the said peace provided at Canterbury until a better form be provided," and says simply "that they will not raise new war or discord in the realm."

<sup>12</sup> R. adds that full security shall be given that the Earls of Leicester and Gloucester be not grieved for anything they have done.

<sup>13</sup> Omitted in R.

<sup>14</sup> Given in R.

arranged in the future.<sup>1</sup> [This ordinance is] for keeping the peace of the realm until the Peace made between the king and the barons at Lewes, in the form of a certain Mise, shall be completed. Which ordinance is as follows:

*Forma regiminis domini regis et regni*

Three discreet and loyal men of the kingdom shall be elected and nominated to reform the status of the kingdom of England. They shall have authority and power from the king to nominate nine councillors, in place of the king;<sup>2</sup> three of these are always to be present in the court, by turns or alternately. The king will ordain and dispose of the castles and concerning all other business of the kingdom with the counsel of these nine. The king will also appoint the justiciar, chancellor, treasurer and other officers, both great and small, in these spheres which are concerned with the government of the court and of the kingdom, by the advice of these nine.

The first electors or nominators shall also swear that they will elect or nominate, according to their knowledge, such councillors as they believe to be useful and faithful to the honour of God and the church, to the king and kingdom. The councillors also, and all officials high and low shall swear, on their appointment, that they will, to the best of their ability, faithfully carry out their offices, to the honour of God and of the church, and to the advantage of the king and the realm, without gift save what they eat and drink, which they will normally consume at a common board.

But if the said councillors or any one of them, turn to evil, in the administration committed to them, or shall have to be changed for any other cause, the king shall

<sup>1</sup> *Videlicet, quod quaedam ordinatio facta in parlamento Londoniis habito . . . pro pace regni conservanda quousque pax inter dictum dominum regem et barones apud Leues . . . completeretur, duriatura omnibus diebus praedicti domini regis . . .*

<sup>2</sup> The Latin is: *potestatem a domino rege elegendi seu nominandi, vice domini regis, consiliarios novem.*

remove those who are to be moved, by the counsel of the first three electors or nominators; and he shall appoint and substitute in their place, with the same counsel, others who are suitable and loyal. If officers, high or low, turn out badly in their offices, the king shall remove them with the advice of the said nine; and he shall, with the same counsel, substitute others in their place.

If the first three electors or nominators shall be in disagreement, in the election or nomination of councillors, or the councillors in disagreement in the creation of officers or in carrying on or disposing of other business of the lord king and of the kingdom, let that be firmly observed which has been done or ordained by two thirds of them in agreement; provided that one of these shall be a prelate of the church, if the business touches the church. And if it happens that two thirds of the aforesaid nine are not in agreement in any matter, the disagreement shall be settled by the ordinance of the first three electors or nominators, or by a majority of them.

And if it shall seem to the community of prelates and barons, in agreement with each other, that it would be advantageous to change or substitute one or more of the first three nominators, the king shall substitute one or more, with the advice of the community of prelates and of barons.

The king shall do all the above things with the counsel of the nine in the said manner, or they shall do them in place of and by authority of the king, so long as the present ordinance lasts, and until the Mise made at Lewes and sealed afterwards by both sides, shall be carried, by agreement, into effect, or until another provision is made which both parties shall approve. This ordinance itself, was made at London, with the consent and wish, and by command, of the king and also of the prelates, barons and of all the community there present. In witness of which, R. Bishop of Lincoln and Hugh

Bishop of Ely, R. Earl of Norfolk and Marshal of England, R. de Vere Earl of Oxford, Humphrey de Bohun, William of Montacute<sup>3</sup> and the mayor of London have placed their seals<sup>4</sup> on this writing. Enacted in the Parliament at London, June 1264.

[Then follow certain attached memoranda, of which the following are the first: Item it was ordained that the state of the church should be reformed [and brought back] into its proper state. Item it was ordained that the three aforesaid electors and the councillors, mentioned in the aforesaid ordinance of London, together with the keepers of castles and other bailiffs of the king, should always be natives; though foreigners may peacefully come [to England] reside here and return to their own lands. . . .]

—From Rymer's *Foedera*, I, 443; printed in *S.C.*, 400-403.

### XIII. The Dictum of Kenilworth, 1266.

1. We declare and provide that the most serene lord prince Henry, illustrious king of England, shall have, fully receive, and freely exercise his dominion, authority, and royal power without impediment or contradiction of any one, whereby, contrary to the approved rights and laws and the long established customs of the kingdom, the regal dignity might be offended; and that to the same lord king and to his lawful mandates and precepts full obedience and humble attention shall be given by all and singular the men of the same kingdom, both greater and lesser. And all and singular shall through writs seek justice in the court of the lord king and shall [there] be answerable for justice, as was accustomed to be done up to the time of the recent disorders.

2. Furthermore, we ask the same lord king and reverently urge his piety that, for doing and rendering justice,

<sup>3</sup> *Monte Canisio.*

<sup>4</sup> *Rigna sua.*

he will nominate such men as, seeking not their own [interests] but those of God and the right, shall justly settle the affairs of subjects according to the praiseworthy laws and customs of the kingdom, and shall thereby strengthen with justice and restore the throne of royal majesty.

3. We likewise ask and urge the same lord king fully to guard and observe the liberties of the Church and the charters of liberties and of the forest, to keep and hold which he is expressly bound by his own oath.

4. Also the lord king shall provide that grants which up to the present he has made of his free will, and not under compulsion, shall be observed; and that he will firmly establish other necessary [measures] determined by his men and at his own pleasure. And furthermore, the English Church shall be fully restored to its liberties and customs, which it had and rightly held before the time of such disorders, and shall be permitted to enjoy them freely. . . .

37. All henceforth shall maintain firm peace, and none shall commit homicide, arson, robbery, or other transgression against the peace. And if any one does so and is convicted, let him have judgment and law according to the custom of the kingdom.

38. Likewise all interested persons shall swear on the Holy Gospels that, on account of the disorders, no one will take private revenge, nor will he procure or consent or tolerate that private revenge should be taken. And if any one takes private revenge, let him be punished by the court of the lord king, and let those who have injured the Church make satisfaction to it.

39. Also, if any one is unwilling to observe this decision, or to undergo judgment by his peers in the court of the lord king, such persons as thus declare themselves, and are accordingly disinherited, shall have no right of recovering their lands. And if any one holding lands of

disinherited men rebels against the decision, he is to have no just claim, by the gift of the lord king, either to the land or to what is paid for redeeming it. Moreover, if any person does not consent to this decision, he is to be a public enemy of the lord king and of his sons and of the community; the people and clergy, in so far as is permitted by canon law, shall prosecute him as an enemy to the peace of the Church and of the kingdom. . . .

Given and published in the castle of Kenilworth on the day before the Kalends of November in the year of grace 1266, the fifty-first year of the reign of the lord Henry, king of England.

—From the *Statutes of the Realm*, I, 12-17; printed in S.C., 407-11.

## CHAPTER V

### The Crisis of 1297

#### (a) *Some Recent Works*

- BARRACLOUGH, G., "Edward I and Adolf of Nassau: A Chapter in Medieval Diplomatic History" (*Cambridge Historical Journal*, VI, 1940, 225-62).
- BÉMONT, Ch., *Chartes des Libertés Anglaises, 1100-1305* (Paris, 1892).
- EDWARDS, J. G., "Confirmatio Cartarum and Baronial Grievances in 1297" (*English Historical Review*, LVIII, April, 1943, 147-72; July, 1943, 273-300).
- POWER, E., *Medieval English Wool Trade* (Oxford, 1941), 63-85.
- ROTHWELL, H., "The Confirmation of the Charters, 1297" (*English Historical Review*, LX, Jan., 1945, 16-36; May, 1945, 177-92; Sept., 1945, 300-15).
- Name not given. (Not modern but still useful.) "Extracts from the Memorandum Rolls (L.T.R.) of the Exchequer: I. The Negotiations Preceding the *Confirmatio Cartarum* (1297 A.D.)" (*Transactions of the Royal Historical Society*, New Series, III, 1886, 282-91).

#### (b) *Introduction to the Documents*

NINE documents relative to the one great political and constitutional crisis of the reign of Edward the First are given below. The first is a brief record to which not much attention has been given, though it is of great importance. It is a writ of May 15, 1297, summoning £20 land-owners to come to London on July 7, ready to go overseas

with the king. Document II tells of the refusal of the barons, in the same year, to serve overseas, and describes the most important events preceding Edward's own departure. He left after a reconciliation with some of his opponents, but without solving the quarrel with the two leading Earls, Bigod of Hereford and Bohun of Norfolk. The two earls were, at the time, Marshal and Constable of England, respectively, and thus occupied key positions in respect of military service, either at home or overseas. This document was probably written by a monk of Westminster who was quite well informed, especially about events in the neighbourhood of London. Document III is the famous letter of Edward I written on August 12, explaining his quarrel with the earls. The next document is the *Monstraunces*, or Complaints to the king from the community or part of the community, presented during the same crisis, on the eve of Edward's departure overseas. Great prominence has been given to these complaints, by recent writers on this crisis, as expressing more clearly than anything else the grievances of the magnates at this time.

The next document (number V) introduces a star witness of the events of 1297, Walter of Hemingburgh, perhaps a Yorkshireman, certainly hard headed, versed in legal and diplomatic procedure and well informed. Walter describes for us the granting of the *Confirmatio Cartarum*, by the government in England, during Edward's absence overseas. He also gives us the document known as the *De Tallagio non Concedendo*, which closely resembles the *Confirmatio*, and Walter is the most important source of our information regarding the relation of these two important documents to each other. Documents VI and VII are copies of the *De Tallagio* and the *Confirmatio* respectively. Document VIII is the story of Edward's promise in 1299, made on the demand of the barons, to confirm the Charters of Liberty. This

also, is taken from the pages of Walter of Hemingburgh. The last document is a bull of Pope Clement V, in 1305, absolving Edward from his oath to the barons, which had been taken, it was said, under compulsion, and thus was not morally binding on the king.

The first document is very important as helping to explain the causes of the great crisis of 1297, which have always been something of a mystery. Perhaps these causes should be discussed at some length, for they are the key to much of the interpretation of the whole crisis, including the very complicated question of the relationship between the various documents referred to above. Stubbs set the modern fashion of approach to the crisis, and it was perhaps a somewhat misleading fashion. He concentrated on the question of taxation, and what he has to say in this connection, supplemented by the researches of J. G. Edwards, could hardly be improved upon. Taxation was, indeed, a supremely important question in 1297. But Stubbs also knew very well the importance of the problem of military service, which no one can ignore since it looms so large in the chronicles of the time; and he confessed that he could not understand how Edward's financial exactions, heavy though they were, could have given rise to such a violent attack. The question of military service as well as of taxation, we may venture to think, lay at the core of the troubles of 1297; and it seems likely that it was with the issue of the writ of summons to the £20 landowners on May 15 that the really formidable crisis began.

The constitutional importance of military service is discussed at length in a later volume. All that need be said here, perhaps, is that the needs of the young national state in the thirteenth century compelled both Henry III and Edward I to attempt a broadening of the basis of service in war under the king's standard. Distraint of knighthood and the insistence on £20 and £40 land-

owners maintaining *arma militaria*, were increasingly common in the years before 1297. The £20 and £40 landowners did not, as a body, owe the same service as the tenants who held knight's fees. All they seem to have owed was the ancient, protective duty of the national militia, the defence of hearth and home. Thus, when Edward summoned them, on May 15, "for the salvation and defence of him and of the whole realm," and explained to them that they were to be "ready to cross with him to parts beyond the seas, for the honour of God, of ourselves and of themselves, as we hope, and for the salvation and common profit of our realm," there seems to be good reason to believe that he was going to persuade them, if he could, to agree to a major innovation in the ancient system of military service. That he was in deadly earnest is shown by his demand, nine days later, for lists of names to be sent to him by the sheriffs.<sup>1</sup> Nor did the matter end there. This summons of May 15 was very closely connected, it is possible, with Edward's well-known and spectacular quarrel with the great magnates. That quarrel had taken place in the previous February, when a number of magnates refused to cross to Gascony without the king. Whether or not they were partly influenced by hearing rumours of a projected revolutionary summons to the small landowners, it is impossible to say. It is not unlikely that Edward discussed the writ of May 15 with the magnates at the assembly of February 24; and this would help to explain the somewhat mysterious flare-up between the king and the Marshal and Constable over what was otherwise, at the most, a very debatable point regarding service abroad. If there was to be such a radical change in the system of military service as was contemplated by the writ of May 15, the two chief military officers in the country may well have

<sup>1</sup> Palgrave, *Parliamentary Writs*, I, 290.

thought that their place was in England, or by the king's side.

The wording of the writ of summons which Edward sent to the £20 landowners was made more significant by the wording of that which he sent to the tenants-in-chief who owed military service to the Crown. Edward did not command the service of the latter. He only asked and affectionately required it. He told the lay tenants-in-chief, in so many words, that he only wanted them to lend him a helping hand, *manus adjutrices*. All this constituted a very serious challenge to the whole system of military service; how serious, it is perhaps not yet possible to say.<sup>2</sup> When the Marshal and Constable led a resolute opposition to Edward, they were facing an issue which may have been as important for the constitution, in the long run at least, as anything in the reign of Henry III. Whilst military power was in the hands of the magnates, the king was confronted with an aristocracy which had a certain cohesion, much political experience, and a clear knowledge of its constitutional rights. This was, at that time, the basis of the rough political balance of the state. If Edward could create an army for himself in which an important, even though not the important, element was the smaller landowner, summoned as a national militia and serving by reason of loyalty to the national king, the military importance of the tenants-in-chief would be seriously undermined. If the military power of the greater magnates was undermined, the political balance in the state would, at least temporarily and perhaps permanently, be destroyed. Behind the question of military service, therefore, there was this great consti-

<sup>2</sup> Dr. N. B. Lewis has offered some wise words of friendly comment on this point, which might well serve to modify the above remarks. Perhaps the only reason, he suggests, why the lay magnates were requested, and not ordered, to give their help, was that Edward, having had a quarrel with them about Gascony, earlier in the year, wanted to be as conciliatory as possible in asking for their service in Flanders. If this is true, it would greatly diminish the significance of the wording of the writs of summons.

tutional issue of 1297, just as important as the question of unconstitutional taxation by the monarch; and there is some slight evidence to suggest that the earls were not ignorant of the magnitude of the crisis. Possibly Stubbs, and even later writers, have done the earls less than justice. It is likely that some deep considerations, such as those suggested above, were behind their "quibbling" in 1297.

The writs of May 15 and 24, 1297, proved to be, for these reasons, something of a landmark in the history of the class which they summoned to the assembly at St. Paul's. That class was roughly equivalent to the knights of the shire, now obtaining a secure place in the parliamentary assembly; how roughly, it is not yet possible to say. These "knights" now found themselves, as in the parliaments of Simon de Montfort, in a position of influence far out of proportion to their real strength in the state. They were the temporary centre of political action; their support was, for a short while, of supreme importance both to the magnates and to the king.

The account of the *Flores Historiarum* (Document II), supplemented by the king's letter of August 12 (Document III), tells us something of what went on, in and immediately after, the meeting at St. Paul's. The chronicler emphasizes the importance of the king's financial exactions, and he mentions a phenomenon destined to be of great importance in the coming years, a "parliament" held by the barons, by themselves, in the March of Wales, to devise measures against the king. Both documents tell also of a crisis arising out of the problem of military service, and describe the scene on July 8 when the earls, in the words of Stubbs, refused "to discharge their official functions and draw up lists of the men intended for the war."

The significance of this action is very great. What had

happened in London apart from this refusal of the earls, we do not know; but there is reason to believe that the "knights" also were, for their part, plainly unwilling from the very start to give the new service required from them. The action of the earls was, therefore, an alignment of themselves on the side of the "people" in the matter of military service, a serious gesture of protest against the policy of the Crown. As Walter of Hemingburgh said, they stood "not only for their own cause but for that of all the community."<sup>3</sup>

It is with this in mind that we must approach the next document printed below, the famous *Monstraunces*. Perhaps the most important single question about this statement of grievances is the question of its origin. Stubbs believed that it purported to be drawn up by all the estates; more recent writers seem to have assumed that it was a petition from the magnates. There is much to be said for this last view. The writer of the *Flores Historiarum*, for instance, in the extract given below, seems to be referring to this statement of grievances when he talks of "their petition" meaning the petition of the earls,<sup>4</sup> and when he describes how the earls "said it would not be advantageous to the king if he crossed to Flanders, or for them to offer him that service which was not customary with their forefathers," remarks which seem to repeat clauses of the *Monstraunces*. But the evidence pointing another way seems to be the stronger. The testimony of the chroniclers is not quite consistent, but on the whole it suggests that the earls were putting forward a petition which had originated not so much in themselves as in a body described as the "community of

<sup>3</sup> *Chronicon*, II, 123.

<sup>4</sup> He was quite explicit in describing the *Monstraunces* as the petition of the earls, in the sense that they presented it. But that does not mean that the petition necessarily originated with the earls.

the land.”<sup>5</sup> Bartholomew Cotton described the earls explicitly as forwarding articles on behalf of that community. Every clause of this statement except three, expressed the feeling of the community of the land.<sup>6</sup>

This seems to suggest that at least the bulk of the *Monstraunces* came from the community of the land, and was endorsed and put forward, as its introduction implies, by the prelates and lords. And the most probable interpretation of the phrase “community of the land,” is that which makes it refer to the £20 landowners who were gathered in London at the summons of the king.<sup>7</sup> This is the meaning which agrees best with the nature of some of the complaints; they seem much more likely to have emanated from medium than from large landowners. It agrees also with the use of the same phrase in the *Confirmatio Cartarum*, a document which is discussed at length below. This conclusion, if it is correct, serves greatly to enhance the importance of the part played by this community of “knights” in the crisis of 1297. It serves

<sup>5</sup> They told the king’s messengers, for instance, that not only they, but also the whole community of the land was aggrieved (Hemingburgh, *Chronicon*, II, 123). According to Walter, the earls sent the *Monstraunces* to Edward *pro se et pro populo*. Bartholomew Cotton also said that the earls “put forward several other articles on behalf of the community of the land” (*Historia Anglicana: I. De Rege Edwardo*, ed. by H. R. Luard (R.S., 1859), 325). Other writers were not so explicit: Edward himself, in the letter of August 12, referred to the grievances as “certain articles for the common profit of the people of the realm.”

<sup>6</sup> One clause, dealing with the king’s passage to Flanders, is ambiguous; it expresses the opinion of all the community. The grievance about the tax on wool came from the whole community; that about Magna Carta came, according to one version, from clerics and laymen; whilst in the introductory clause it was claimed that the whole grievances were shown to the king (but not, it will be noticed, drawn up) by the prelates, earls, barons, and all the community of the land.

<sup>7</sup> The community of the land were distinguished, in the opening words of the *Monstraunces*, from the bishops and earls. There is a great danger in pressing this sort of distinction too far. On the other hand, it cannot, perhaps, be safely ignored. The same distinction is made in the *Confirmatio*. For an able discussion of the meaning of a similar phrase, see J. R. Strayer, “Statute of York and Community of the Realm” (*American Historical Review*, XLVII, 1941, 1-23); cf. my “Coronation Oath of Edward II and the Statute of York” (*Speculum*, XIX, 1944, 445-69).

to make the *Monstraunces*, as Mr. Edwards has suggested, the prime statement of the grievances which inspired the opposition to Edward in 1297; but it suggests that these grievances were not, in the first place, "baronial"; and this fact, in turn, suggests one reason for the very important differences between the grievances recorded here and in the baronial documents which were presented to Edward later on in the crisis.

The situation seems to be that the earls had already, in the previous February, implied their willingness to serve with the King in Flanders. Now, they threw in their lot with the "knights" and, according to Bartholomew Cotton, first denied that any who held by service were obliged to serve in Flanders, and then proposed several articles for the community of the land. But it is doubtful if they had nearly as good a case as the "knights" for such a refusal. On the other hand, Edward was far less able, in their case, to agree. It looks as if we should be wise to make some distinction between the position and claims of the magnates and those of the knights as reflected in the *Monstraunces*.

It has been suggested, indeed, that the *Monstraunces* are the source to which we must look for the origin of the document known as the *Confirmatio Cartarum*; but the differences between the two seem to be too great for any direct relationship; and before we proceed any further with our investigation, we must examine their contents to see what these differences are. In the *Monstraunces*, the community of the land had one main grievance and a number of subsidiary ones. The main grievance was about military service. The king's writ had given insufficient warning because it did not give the location of the service; and, whilst it was commonly said that the king wished to go to Flanders, they (the petitioners) did not think they ought to do any service there, for neither they nor their predecessors had done service in that land.

Even if they ought to do service there, they had not the means. At this point the petitioners introduced their subsidiary grievances, the financial exactions which had deprived them of the means to do military service even if they had been under an obligation to do so. These were tallages, aids, and prises, the latter of corn, oats, wool, hides, cows, etc. They complained further that they were not treated in accordance with the laws and customs of the land; and clerics and laymen were grieved that they were not given the full benefit of *Magna Carta*. The Charters of the Forest were not properly observed. The tax on wool was too heavy. It was not to the king's advantage to cross into Flanders.

The great preoccupation of the petitioners was their summons to go to war. They expressed this and other grievances, but they did not put forward specific articles of reform. Tallages and aids were not said to be illegal; they were the reason why the petitioners were too poor to go to war. Neither was the *maltolt* illegal. It was too heavy. Incidentally, it might be noticed, in conclusion, that in all this there was no mention of the great question at issue between Edward and the earls, that of service under the banner of the king himself. The grievances in the *Monstraunces* seem to bear the marks of their origin. It is true that they served the purpose of the tenant-in-chief as well as of the "knights"; but the language seems to be that of the smaller landowner rather than that of the earl.

In the *Confirmatio Cartarum*, the king conceded, firstly that *Magna Carta* and the Charter of the Forests should be fully kept; secondly that aids, taxes, and mises should not be taken in future unless it was for the common benefit of the kingdom and with the common assent of the whole kingdom, except the ancient aids and prises due and accustomed; thirdly that the *maltolt* on wool should be abolished, not to be levied again without the

consent of the greater part of the community, those, that is, who had felt themselves to be greatly oppressed by the tax. There was no direct mention of military service, nor any specific reference, such as there was in the petition, to the laws and customs of the land, though this question might have been regarded as covered by the confirmation of Magna Carta. The only indication of any special connection between this concession and the community of the land was the fact that the concession regarding aids, mises, and prises was made to the prelates and magnates and to the whole community of the land.

It does not seem probable, from this comparison, that the famous *Confirmatio Cartarum* was drawn up simply and directly from the *Monstraunces*. The differences between the two militate against such a conclusion. There is, indeed, a closer resemblance between the *De Tallagio*, to be discussed in a moment, and the *Confirmatio*, than can be established, by the greatest ingenuity, between the two documents examined above. There is unquestionably a relationship between these two documents. The one was, in the long run, derived from the other. But it seems probable that much water flowed under the bridge before the initial demands of the £20 landowners came to be transformed into the royal concession of the *Confirmatio Cartarum*. The biggest problem confronting historians relevant to the two documents so far discussed, seems to be not that of establishing the resemblance, but of accounting for the difference, between them.

How the *Monstraunces* came to be transformed into the *Confirmatio* should be discussed at length, for it is important. It will be remembered that the earls put forward the former document, which may have originated with the "knights," They claimed to represent prelates, barons, and "knights." Edward was thus faced with a coalition of all the elements of the laity which he had

gathered at London. He had to make concessions to somebody or it would be impossible for him to carry out his Flanders campaign. The extract from the *Flores Historiarum*, given below, tells how this was done. Before turning to this, however, one more point should be made. It is almost certain that, though Edward claimed to be officially ignorant of the contents of the *Monstraunces* as late as his letter of August 12, he knew all about the coalition which was forming against him, and had a very good idea of the specific demands which were going to be officially presented. What he did, accordingly, the *Flores* tells us, was to stage a great reconciliation with the Archbishop of Canterbury and the prelates, as far as these could be won over. Then he turned to the "knights." He still refused to consider officially the demands which the earls were voicing in their name, but in return for an aid, he conceded the two main ones, namely the question of military service and the question of the Charters of Liberty. There are a number of reasons for this guess. The first is the story of the *Flores* which tells of his renewal of the Charters in return for an aid granted to him by the people,<sup>8</sup> that is the *plebs*, standing around in his chamber. The second is the fact that, in a famous scene in the Exchequer, shortly after Edward's departure for Flanders, the earls protested (this seems to be a fair inference from their words) that only the knights had consented to the aid. The third is the fact that in his letter of August 12, translated below, Edward showed quite clearly that when he wrote he had already renounced his attempt to persuade the "knights" to agree to a general scheme of service, on their part, overseas. It seems likely that he had conceded this before the "people" granted him the aid.

When Edward at length embarked for Flanders, the

<sup>8</sup> Other chroniclers bear out this story, e.g., Hemingburgh, *Chronicon*, II, 127: *quem rex expetierat a populo.*

evidence suggests that he had carried out a remarkable work of reconciliation and concession, coupled with some vigorous and somewhat unscrupulous propaganda. In the writs which were issued for the collection of the eighth, for example, he had suggested to the nation, quite falsely, that the magnates had been partners to the agreement by which the aid had been granted in return for royal concessions, and that they had agreed to a political truce. He made exactly the same suggestion in his letter of August 12, translated below. Actually, the only group he had not made a real effort to conciliate was that of the earls and their supporters. He refused to give them an answer at Udimore, on the eve of his departure. But he had good reason to believe that he had done enough to keep some sort of peace in the country until his return. His last letters to his officials, some written whilst he was actually on the high seas, seem to show that he had finished with concessions and was determined to see the crisis through on the basis he had already established. The famous visit of the earls to the Exchequer, immediately after his departure, to protest against the levy of the eighth, was perhaps an attempt to destroy this basis, and to set their case right in the eyes of the country. But the earls showed how much they had become estranged from the "knights" by directing part of their protest against them, at least by implication; and they showed how they had broadened their political platform by claiming to represent the commonalty of the realm (not of the land) both clerical and lay.<sup>9</sup> Their attitude seems to suggest that they were attempting to counter Edward's effort to dissolve their coalition by broadening their own appeal to the nation. They diminished the emphasis on the question of military service, which was no longer an immediate issue, and they dwelt strongly on the question of

<sup>9</sup> The official version is printed in Edwards, "*Confirmatio Cartarum* and *Baronial Grievances in 1297*" (*E.H.R.*, LVIII, April, 1943, 156).

taxation, which had been made much more effective for them by Edward's dangerously unconstitutional method of levying the eighth. Thus they appealed strongly to the burgesses as well as to the "knights." Perhaps that is one reason for the fact that representatives of the cities and boroughs were not summoned to the assembly which the council in England called, to meet on September 30, for an attempt at reconciliation with the earls. In any case, if this reconstruction is even partly true, it goes far to explain the difference between the first demands of the earls, made on behalf of the magnates and the "knights," and the royal concession of October, 1297. In relation to the *Confirmatio Cartarum*, the knights clearly played a much more restricted part.<sup>10</sup>

Before we can make any general comments on the contents of the *Confirmatio*, there is one last important problem which we have to attempt to solve. This is the relation between the *Confirmatio* and the *De Tallagio non Concedendo* (Document VI). For this we have to rely most of all on the narrative of Walter of Hemingburgh (Document V), with due regard for his borrowings from earlier writers. Document VI, it will be seen, closely resembles the *Confirmatio Cartarum*. A detailed discussion of all the minute differences between them perhaps falls outside the scope of this work.<sup>11</sup> The problem may possibly be illustrated by a brief discussion of the most important single difference, that relative to the future impositions of the *maltolt*, or illegal levy on wool.

Section three of the *De Tallagio* stated that the *maltolt* on wool should be abolished. The *Confirmatio* only granted that the community should be relieved of the *maltolt* and that it should not be levied again without their common assent and good will, saving to the king the

<sup>10</sup> We owe this to Mr. J. G. Edwards, in the article cited above.

<sup>11</sup> For this, see the valuable articles by Mr. Edwards and Mr. Rothwell, listed above.

custom previously granted by the community. Mr. Edwards has seen an important difference between the two concessions<sup>12</sup> in that the latter reserved to the king the ancient custom granted to the ruler in 1275, whilst the former, by implication denied it. There is, indeed, an important difference in the formal wording of the two documents. But it is doubtful, in spite of this, how far the barons ever intended to abolish such an ancient and well-established imposition as the *magna et antiqua custuma*, which had originally been granted as early as 1275. The custom of 1275 had been conceded in parliament with the assent of the magnates and others, as a permanent concession. It was now a long-established and, indeed, indispensable part of the economy of the state. It is very doubtful if the magnates regarded it as a *maltolt*. Failing any direct evidence on the point, it seems safest to assume that the magnates never contemplated in 1297 the rejection of such a well-founded and necessary tax. In this case, the wording of the royal concession regarding the custom on wool, though very different in the two documents we are considering, amounted, in practice, to almost exactly the same thing. There was to be no further imposition of the *maltolt*. If a loop-hole was left for the imposition of additional customs by the wording of the *Confirmatio*, the loop-hole was very small. It was made by introducing the principle of consent, a principle to which the magnates could have no reasonable objection, and which could, indeed, be used by them to deny all further impositions of the tax.<sup>13</sup> The relationship between the *De Tallagio* and the *Confirmatio* which is suggested by this difference is that the latter was derived from the former, with some minor modification which was calculated to make it more acceptable to the advisers of the king.

<sup>12</sup> E.H.R., LVIII, 169.

<sup>13</sup> The whole problem is discussed in my *Studies*, 58-66.

Other differences suggest the same or a similar relationship.<sup>14</sup> The opinion of modern historians was, indeed, apparently stabilizing in favour of the theory that the *De Tallagio* represented the demands of the magnates, and the *Confirmatio* the king's concession which was drawn up on the basis of those demands, when it was sharply challenged by the work of Mr. J. G. Edwards, listed above. Mr. Edwards did this, not so much by denying the resemblance between the two documents, though he was naturally inclined to stress the differences between them, as by strongly questioning the authenticity of the *De Tallagio*. He did not believe that the *De Tallagio* was a genuine statement of the baronial demands. That statement, he believed, was the *Mons-trances*, already discussed above. "In reconstructing the history of 1297," he wrote, "a genuine baronial petition is worth much more as evidence than a doubtful baronial draft charter. The genuine baronial petition is extant. It is the *Monstrances*." This conclusion is so important, fraught with such large consequences for the study of this period, that it must be considered at considerable length.

In questioning the authenticity of the *De Tallagio*, Mr. Edwards' main line of attack is on the reliability of Walter of Hemingburgh. It was Walter who recorded the *De Tallagio*, apparently as representing the baronial demands, from which, Walter tells us, the barons would not be moved. Mr. Edwards has been able to show that Walter copied from older sources and that he made mistakes. He has pointed out that there are queer features in the style of the *De Tallagio*, suggesting that it was not likely to have been drawn up in the form in

<sup>14</sup> Another difference, for example, between the two documents, is that in section five of the *De Tallagio* a demand was made for the pardon to the earls and the £20 landowners. This was not granted in the *Confirmatio*. But a separate letter of pardon was issued by the council in England, conceding the pardon as far as the council could.

which it now exists, even by the barons. All this, it must be confessed, has badly shaken the testimony of Walter. On the other hand, it has not really made it worthless. Walter still remains in some respects the most valuable historian of this period. Some of the mistakes alleged against him may be no more than ambiguities in his language, as for instance his apparent assertion that Edward himself sealed the *De Tallagio*, which seems to be out of the question. Similarly, the style of the *De Tallagio* may be puzzling; but it still has not been finally established that it is irreconcilable with the theory that this document represents, with some accuracy, the demands which the magnates put before the council in England in the absence of the king.

Perhaps the problem of the *De Tallagio* may be regarded as still open. This is the more so since Mr. Rothwell, who published a very detailed and scholarly discussion of the crisis of 1297,<sup>15</sup> the last part of which appeared after the above words had been written, has concluded that the *De Tallagio* cannot yet be disregarded as an expression of the baronial demands. If this is so, we must still, it seems probable, relate the *De Tallagio* to the *Confirmatio* in much the same way as they have already been related in the *Studies in the Constitutional History of the Thirteenth and Fourteenth Centuries*, cited above. The *Confirmatio* was the governmental concession drawn up on the basis of the *De Tallagio non Concedendo*, representing only minor changes from what the barons considered to be their essential demands. But, as Mr. Edwards has shown, the origin of both these documents must ultimately be found in the *Monstraunces*. It is possible however, that the first authors of the *Monstraunces* themselves, were not the magnates, but the £20 landowners who objected to the military service

<sup>15</sup> Cited above.

as well as other exactions which were demanded from them by the Crown.

We are now, at length, in a position to indulge in a few general remarks; firstly about the relation of these three documents, discussed above, to each other and to the history of the crisis of 1297; secondly about their significance in the development of the constitution. It is sometimes assumed that the really important concessions which the opposition of 1297 wished to obtain from Edward I were the clauses of the *De Tallagio* or the equivalent clauses in the *Confirmatio*; but it is possible that this was not the case. What they wanted most was the confirmation of the Charters. The additional articles were important because the matters they dealt with were not adequately treated in the Charters; but Magna Carta itself still contained the great safeguards which the nation wished to see reasserted, even as late as 1297. It had clauses which laid down the basic principles of both military service and taxation. It is much to the credit of the earls that they took the grievances of the "knights" which were, in the main, simply an expression of discontent, and made out of them the important and clearly formulated political programme of the *De Tallagio* added to Magna Carta. As we have seen, it is probable that the magnates considerably modified their demands after the king's negotiations with the smaller landowners and the church. It is tempting to think that their final programme was hammered out at the baronial "parliament" at Northampton, on September 21.<sup>16</sup> In any case, wherever they did it, they placed the whole statement of grievances on a higher level by making it centre on the Charters rather than on any more particular concession. But it is most unlikely that, in this final statement, they overlooked altogether the question of military service,

<sup>16</sup> Recorded in the *St. Edmundsbury Chronicle*; see the comment of Professor Galbraith, *E.H.R.* LVIII, 61.

which had been perhaps the most important single cause of the whole crisis of 1297.

A big question which has received some attention of late is why, if military service was so important, the earls were content merely to demand, in the *De Tallagio*, that Edward should remit his anger against them and the £20 "knights" for refusing to go to Flanders. Why did they not get a clear-cut concession regarding military service from the king? The answer is possibly that the pardon was all they needed to ask for in the *De Tallagio*, since the question of military service was adequately dealt with in Magna Carta itself. There, it said, in clause sixteen, that no one should be distrained into rendering greater service from a knight's fee or any other free tenement than he owed. This covered the knights completely. Whether it helped equally the tenants-in-chief by military service, in their recent quarrels with the king, is open to debate; but it has been suggested all along in this chapter that the really important aspect of military service, which was before the nation in this crisis, was that which affected the knights. Thus the magnates, in their demands on the council in England after Edward's departure, had a programme which actually covered all the main grievances of the nation. They do, indeed, seem to have had the support of most of the politically important part of the community, including the knights of the shire, who represented roughly the same group as the £20 landowners whom Edward had tried to conciliate before his departure overseas. There was thus, in the end, a "confederacy" of the nation against the king, at the moment when he was overseas, fighting the nation's battle as well as his own, a confederacy which, it has been suggested elsewhere, he never forgot or forgave.

The *De Tallagio*, the document in which this confederacy now put forward its demands, was not an unstatesmanlike document. It was, of course, not perfect.

Not even its great prototype, *Magna Carta*, had been that. In their two great prohibitions in the *De Tallagio*, the prohibition of *maltolts* on wool and, by implication, of the exaction of more than their ancient, defensive, military service from the "knights," the magnates imposed restrictions on the ruler which were probably unduly severe for the conditions of the period, caused deep friction in the future, and were, in the end, only partly sustained. Indeed, only the more statesmanlike wording of the *Confirmatio*, probably introduced at the urging of the council in England, prevented the prohibition of the *maltolt* from being absolute, with not even the possibility of imposition by full agreement and consent. This might have proved to be an impossible restriction on the finances of the Crown. On the other hand, there might have been equally disastrous consequences arising from the refusal of the new military service by the knights. These were, in fact, evaded by ingenious methods of recruiting this same class of the population which were extensively employed, methods which observed the letter of the ancient and almost obsolete prohibition of 1215, but which helped powerfully to create the "bastard" feudalism of the late fourteenth century. Above all, perhaps, the way in which the *De Tallagio* was imposed on the council in England, and on Edward in spite of his promises and attempts at conciliation, when he was defending England overseas, caused a tragic interruption in the long-established and harmonious co-operation of the king and the magnates in the business of the state.

Yet the magnates proved to be not altogether unreasonable. They were adamant against any changes being made in the substance of the king's concessions which they had drawn up for the council in England, but they agreed to statesmanlike improvements in the language so as to permit some slight elasticity in the system of taxation, some safeguard for the royal preroga-

tives which were not in question, and some possibility of future expansion in the taxation of wool, on the basis of consent. All this appears in the *Confirmatio*; and it is clear that some of the significance goes out of this document if it can no longer be regarded as an outcome of the *De Tallagio*. If it is so regarded, as suggested above, it is possible not only to explain the significance of some of its clauses by reference to the earlier document,<sup>17</sup> but also to see more clearly how, regarded as the complement to the ancient concessions of Magna Carta and as defining the constitution in respect to the fundamental question of taxation, not adequately covered by Edward's other concessions, the *Confirmatio Cartarum* was to be a corner-stone of the English constitution for very many years to come.

The crisis of 1297 therefore, not only placed a definite check on the tendencies which Edward I had shown, to ignore the deep principles of the constitution under stress of the necessities which confronted the nation. It also showed a revival and extension of the "national" opposition which had at times confronted Henry III. In particular, it witnessed the emergence of the merchants and the knights of the shire—particularly of the latter—to an unprecedented political importance. It was a landmark in the advance of the knights, represented in this case by the £20 landowners, towards political maturity. It helped to establish the tradition of co-operation and political alliance between the knights and the magnates, on which a good deal of the political future of England was to depend. A dependence of the knights on the monarchy, in mutual support against the claims of the great lords, would in the long run have been fatal to the political liberties of the country. Of course such a mutual support of king and small landowner did not really lie in the logic of the situation in 1297, but there can scarcely

<sup>17</sup> This has already been attempted in my *Studies*, cited above.

be any doubt that Edward made a formidable attempt to obtain it. He was defeated by the public spirit and political strategy of Bohun and Bigod, who unhesitatingly made the cause of the £20 landowners that of the greater magnates, and transformed the complaints of the former into one of the great reforming platforms of the century.

What the opposition achieved, in 1297, was a great vindication of the ancient political principle of government by consent. It was the application of this principle to the two great "modern" problems that had risen to confront the nation since 1215. The first problem was that of expanding taxation. The second was that of military service. Though neither problem was solved, important progress was made in regard to each. In taxation, Stubbs' dictum still stands as substantially true. The clauses of the *Confirmatio* as compared with the corresponding clauses of Magna Carta were as the substance to the shadow, the performance to the promise.<sup>18</sup> In military service the declaration of principle was not so explicit. But the crisis of 1297 nevertheless decisively prevented any arbitrary use of the king's power, to obtain military service from his subjects beyond that provided by ancient obligation or freely rendered on a basis of consent.

It is true that the only promise Edward made was not to compel either tenants by service or £20 landowners to serve in Flanders, except at the king's wages. But the crisis did settle that they should not be compelled to serve in 1297. And this, in the case of the smaller landowner may have been a precedent of decisive importance. One prominent reason for refusal, in the case of the earls, seems to have been that they were only requested, not commanded, to serve; but the sole reason in the case of the knights was that neither they nor their predecessors had ever served in Flanders before, and this would apply,

<sup>18</sup> C.H., II, 149.

so far as we know at present, to any country overseas. In the case of the knights at least, the crisis of 1297 does seem to be a landmark in their steady refusal of an obligation to military service overseas.

Because of this vindication of ancient tradition, the struggle for the *Confirmatio* deserves to be recorded as one of the great constitutional conflicts of the thirteenth century. Because Bohun and Bigod stood, however imperfectly, for the application of the ancient principle in these two vital spheres of governmental action, they were able to win over the nation from the monarch, in spite of Edward's great hold on the gratitude and affection of his subjects, and in spite of his very effective appeals. It is possible that the magnitude of their achievement was not appreciated by Stubbs, despite his admiration for their action, and perhaps has not been adequately appreciated even in the admirable recent research. It is probable also that it will not be appreciated until the whole crisis of 1297 is recognized for what it was, a great struggle between great protagonists, fraught with very great consequences for the future of the state.

After all this, the bull of Clement V in 1305, absolving Edward from his oaths to the barons (Document IX) need take up little space. It is probable that the wording of the bull is not just verbiage, put out by the Papal chancery to cover a somewhat shady transaction. It represented the case put forward by Edward to the Pope. Edward intended it to be a serious case. As suggested above, the way in which the barons had acted in 1297 had probably seemed to Edward to be as important and harmful as the demands they had actually made. What use the king intended to make of the Pope's letter of annulment we cannot be sure; and on this point, too, there is a difference of opinion. On the whole, it seems unlikely, as Stubbs also believed, that Edward intended to go back on his concessions, except in the case of some

part of the Forest Charter. Perhaps, when he found pride in his motto of "keep troth," one of the things he held to his own credit was that he had never seriously contemplated the annulment of the *Confirmatio Cartarum*, which he so cordially disliked. But he knew very well what harm it had done to the royal position; and perhaps the wording of the Papal condemnation was an attempt to undo some of the effects of what had been perhaps the most successful coercion of the monarch in the thirteenth century. It was a coercion at the expense of the strongest ruler, which was achieved by a combination of subjects, united on a sensible political platform with a national appeal, organized into a confederacy, and with a "parliament" and an army of its own. It was a coercion which Edward rightly felt was ominous for the future of the monarchy, and might well, in its consequences, be tragic for his incapable son.

(c) *Documents*

- I. Writ of May 15, 1297, summoning the £20 land-owners to be at London on July 7, 1297, ready to go overseas with the king.
- II. Events on the eve of Edward's departure overseas, according to the Monk of Westminster.
- III. Letter of Edward I, August 12, 1297, justifying his action in the dispute with the earls.
- IV. The *Remonstrances* of 1297 and the king's reply.
- V. The *Confirmatio Cartarum* and the *De Tallagio non Concedendo*, according to Walter of Hemingburgh.
- VI. The text of the *De Tallagio non Concedendo*.
- VII. The text of the *Confirmatio Cartarum*.
- VIII. The promise of Edward I to confirm the Charters, 1299
- IX. The bull of Clement V, 1305, absolving Edward I from his oaths to the barons.

- I. Writ of May 15, 1297, summoning the £20 land-owners to be at London on July 7, 1297, ready to go overseas with the king.

The king to the sheriff of Yorkshire greeting. In order to obviate more circumspectly the dangers and perils which may arise to us and to all our realm through the plots of our enemies, we lately commanded you that you should inform all those of your bailiwick, both within liberties and without, who hold £20 worth of land and of rent *per annum*, and similarly those who have more than that, namely both those who do not hold of us in chief and those who do, that they were to provide themselves with arms and horses and were to make themselves ready without delay, so that they might be prompt and fit to come to us and to go in the company of our own person for the salvation and defence of themselves and of all our realm whenever we should summon them. Now we shall be constrained to decree<sup>1</sup> our passage overseas for that salvation. We bid you, firmly commanding you in the fealty which you owe us, that without delay you request on our behalf and require and firmly enjoin all and singular of your bailiwick, both within liberties and without, who have £20 of land and rent or more, as above, from whomsoever they hold, that they be with us in London on the next Sunday after the Octave of St. John the Baptist with their arms and horses. Each one must be as is fitting his condition, and ready to cross with us to the aforesaid foreign parts, to the honour of God, of us and of themselves and for the salvation and common profit of the realm. . . . Witnessed by the king, in London, on the 15th day of May.

—From Palgrave, *Parliamentary Writs*, I, 281.

- II. Events on the eve of Edward's departure overseas.

At that time it was proclaimed throughout England,

<sup>1</sup> *Jam duxerimus statuendum.*

by the voice of the crier, that the possessors of wool should expose this for sale within a month, in the cities assigned; otherwise they would forfeit the wool to the king. And when this had been gathered together cunningly, in the aforesaid manner, on April 23, it was shipped across to Flanders as forfeit to the king. Disturbed by these and other extortions, the earls and barons of England decreed a parliament by themselves in the forest of Wyre situated in the March [of Wales]. . . . On 8 July, the barons and the knights of the realm<sup>2</sup> were summoned to London; and the king commanded his constable and his marshal, that is, the earls of Norfolk and Hereford to enroll before them at St. Paul's as many men-at-arms as each one could raise for the king, to proceed to war.<sup>3</sup> They replied that he should command some other of his household to do this office, because, not having been summoned but only requested [to go], they turned away from the idea of going. This was displeasing to the king, so that shortly he appointed two others to fill their offices.

At this time, when he had admitted the archbishop again into favour and when his barons had rejoined him, the king standing on a wooden platform before the great royal palace at Westminster on the day before the Ides of July, with his son and the archbishop and the Earl of Warwick standing with him, very humbly and with tears on his cheek, asked pardon for wrongs he had done. He said he had ruled them less well and less serenely than a king might, and that he had only accepted the small part of his resources which they had given, or which his ministers had extorted without his knowledge, so that he might more strongly overcome the dangerous efforts of

<sup>2</sup> *Barones et militia regni.*

<sup>3</sup> The texts printed on page 101 and 294 vary. The former has the words *quot equituras quisque posset inventire ipsi* (om. *regi*) *in proximo processu* *ad bellum*. The latter omits *proximo*. Norfolk, not Hereford, was the marshal.

his enemies thirsty for English blood; and that, by using up a small part of these resources of the state, he might preserve the great mass to be possessed in peace. And he added, "Behold I go to expose myself to danger on your behalf. I beg of you if I return, receive me as you have me at present, and I will return to you all that I have taken. If I do not come back, crown my son as your king."

The archbishop, bursting into tears, promised that he would faithfully carry out these wishes, and all the people pledged their faith with outstretched arms. Meanwhile the aforesaid earls remained absent, of their own accord, until their petition for the relief of the country should be heard; they said it would not be advantageous to the king if he crossed to Flanders, or for them to offer to him that service which was not customary with their forefathers, especially since the Scots had relapsed into war, in the same way that the Welsh did for a long time, even though the king was still here.

They also demanded, alleging for the first time the bankruptcy of the community, that he should not in future usurp [the right of] tallages throughout England; that liberties contained in Magna Carta and the Charter of Forests should again be effectively enjoyed; and that he would revoke entirely the arbitrary exactions made over and above these.

When they were not immediately listened to, on these points, the said earls and barons indignantly departed. When the king saw this, moved by the inducement of creating unity and by the persuasion of achieving victory, he ordered the articles contained in the aforesaid charters to be renewed and observed, demanding, in return for this concession, an eighth to be given from each person. This was quickly conceded to him by the people (*plebs*) who were present in his chamber. . . .

—From the *Flores Historiarum*, III, 101-2, 294; printed in *S.C.*, 433.

### III. Letter of Edward I, August 12, 1297, justifying his actions in the dispute with the earls.

The king always desires peace and quiet and the happy state of all the people of his kingdom. In particular, he wishes that after the voyage that he intends<sup>1</sup> to go on now, for the honour of God and to recover his rightful inheritance, out of which he is being very fraudulently tricked by the King of France, and for the honour and common profit of his realm, all occasions by which the said peace and quiet might in any manner be troubled, may be completely removed. Yet some men might speak and cause the people to hear certain untrue words, by which the people themselves might be moved to rise up against their liege lord contrary to their duty, as in respect to the recent departure from him of the Earl of Hereford and the Earl Marshal or in respect to other occurrences. Therefore, he [the King] makes known, and wishes all to know, the truth which follows concerning this and concerning his own state and that of his kingdom, and how the affairs of his kingdom have been recently going.

Lately, when a great company of English men-at-arms came to London, some by request, others by summons of the King, the King, wishing to provide for the deliverance of the people themselves and for the alleviation of their expenses and discomforts, sent word to the said earls, as well as to the Constable and Marshal of England, that they should come to him on a certain day to order the deliverance of the said people. On which day the Earl of Hereford and Sir John de Segrave, who presented the excuses of the Earl Marshal because of the illness of the latter, came to the King. In their presence and with their assent it was ordered that they should cause to be proclaimed throughout the city of London, that all those who had come there by summons

<sup>1</sup> *Bye*; the meaning is obscure.

or by request should be the next day at Saint Paul's in the presence of the said Constable and Marshal, so that it could be ascertained and recorded how and how much each of them was willing to serve or aid the King in this voyage abroad. The King told them that, according to the said ordinance which was given to them in writing, they should have the said proclamation publicly announced. And they, when they had received the said command and the said written order went away. Then, the evening of the same day, the said earls sent to the King by Sir John Esturmi, knight, a letter written as follows:

"Dear Sire, you sent word by the Constable, in writing, to the Marshal that he should cause to be proclaimed throughout the city of London, that all those who have come by your summons or by request be tomorrow at Saint Paul's in their presence at the hour of prime. And he should cause to be set down in writing how many horses of all concerned [will be furnished], and communicate this to you. But your Constable and your Marshal beg you to consent to give this command to some other member of your household. You, Sire, are well aware that they have come here by your request and not by summons;<sup>2</sup> yet if they should do this, they would be entering on their office to do service [as though they had been commanded]. Wherefore they request you to consent to give the order to someone else."

And the King, having received the said letter and taken counsel, because it seemed to him that they had written inadvisedly and he did not wish them to be caught in a mistake, sent to them Sir Geoffrey de Genevile, Sir Thomas de Berkley, Sir John Tregoz, the Constable of the Tower,<sup>3</sup> the Keeper of London,<sup>4</sup> Sir Roger Brabazon and Sir William de Bereford, to advise them better on this, and to provide in this way against

<sup>2</sup> i.e., requested as distinct from commanded.

<sup>3</sup> Sir Ralph Sandwich.

<sup>4</sup> Sir John Breton.

there being anything that might turn out to the prejudice of the King or to their own. If they were unwilling to decide differently, they should be asked if they avowed the said letter and the words it contained. This they admitted fully. And when this avowal was reported to the King, he, having taken counsel upon it, appointed Sir Thomas de Berkley, in place of the Constable Earl of Hereford, and Sir Geoffrey de Genevile in place of the Earl Marshal, because the said earls had requested that the King give the command to others, as it is stated in the said letter. Thereupon the earls departed from the King and from his court. And soon after that the Archbishop of Canterbury and several bishops of England came to the King and asked permission to speak to the said earls. The King granted their request; wherefore the said archbishop and the other prelates asked the said earls to let them know where it would please them to come and speak to them; and the earls sent word back by letter that they would be at Waltham, on Friday the day after the feast of Saint James.<sup>5</sup> On which day the said archbishop and bishops went to Waltham; and the said earls did not appear but sent [there] Sir Robert Fitz Roger and Sir Johan de Segrave knights, who said on behalf of the earls that for certain reasons they could not come at that time. And then, at the request of the said prelates and of the said knights who came to the King at Saint Albans the Sunday next following,<sup>6</sup> the King granted safe conduct to the said earls and give his letter concerning this to the said knights, stating a reasonable time within which the said earls could safely and with his safe conduct come to the King and stay [with him] and return. With this letter, the said knights took their departure for this time from the King; but never since have the earls come to the King or sent anyone; nor are

<sup>5</sup> July 26.

<sup>6</sup> July 28. Rymer's text says "the day after."

they now coming or sending anyone, as far as the King knows.

Now it may be that some individuals have given the people to understand that the earls showed the King certain articles for the common profit of the people and the kingdom, and that the King [supposedly] refused and completely rejected them; of which the King knows nothing, for they showed him nothing and caused nothing to be shown to him; nor does he know why they have stayed away, but rather he hoped from day to day that they would come to him.

Among these articles there is mention, so it is said, of certain grievances which the King has caused his kingdom to suffer, of which he is very cognizant, such as the aids that he has frequently asked of his people. He has been obliged to do this because of wars that have been incited against him in Gascony, in Wales, and in Scotland and elsewhere, against which he could not defend himself or his kingdom without the assistance of his loyal subjects. He is much grieved that he has put such burdens and hardships upon them; and he begs them to be willing to excuse him, as one who has inflicted these impositions, not to buy lands, or tenements, or castles, or towns, but to defend himself and them and all the kingdom. And if God grants that he shall ever return from the voyage that he is now taking, he wishes all to know that he has the will and the great desire to make real amends according to God's will and his people's wish, to the greatest extent his duty commands. And if it should come about that he did not return, he intends to ordain that his heir shall do just as if he himself were returning, in respect to what he [Prince Edward] will cause to be amended; for he well knows that no one is so bound to the kingdom or obliged to love the good people of his land as he [the king] himself. Moreover, [firstly] since they [the great lords] have undertaken to cross over to

help the Count of Flanders who is his ally, and in particular to put such an end as God wills to this affair of the king and of his kingdom (for it is better to put an end to the business as soon as one can than to languish for so long a time): [secondly] because they well saw that he was not able (nor is it possible) to pursue and maintain from his own resources so great a venture and since the voyage is so urgent because of the great dangers in which the King's friends beyond the sea find themselves, as a result of which, should they lose, the kingdom might next fall into great peril, which God forbid; and [thirdly], in order to obtain the ratification of the Magna Carta of England's liberties and of the Charter of the Forest, which ratification the King graciously granted them; they, the great lords who were recently with him in London made him a common grant such as he is in great need of at the present time. Whence he begs all loyal subjects and all the people of his kingdom, who have never failed him, that they do not consider this gift burdensome, [both] since they well see that he is not sparing his person or his possessions to relieve them and himself of great hardships that they have suffered and are still suffering in great misfortune from day to day, and also because they know that the need is greater than it ever was at any time. And because there will result from this voyage, if it please God, a good and lasting peace, each one must consider himself less burdened by this gift, and thereby they can be delivered the sooner from the anguish and labours from which they are suffering and have suffered before this time.

And if any should give it to be understood in the land that the King has refused articles or anything [else, thus acting] against the common profit of the kingdom, to dishonour and harm his people, or that he has behaved toward the earls otherwise than in the aforesaid manner, he begs that no one believe him [i.e., a person making

such statements], for this is the correct account and the whole truth of how things have gone up to the present. And let each one consider what great discord arose formerly in this kingdom from one end to the other through those words [disputes] between the lord and his subjects and the harm that resulted from them. And if these things should be believed to be other than they are, it might come about in consequence that riot would result, which would be more dangerous and more grave than any ever was in this land. And those who disturb the peace of this kingdom in any manner whatever are excommunicated; and also all those who give to the trouble-makers in money, horses, arms or otherwise or give them aid or favour secretly or openly, whatever their state or condition may be; from which sentence of excommunication none can be absolved without special command of the Pope, except in *articulo mortis*, as appears in a bull of the time of Pope Clement in the King's possession, which a great many of the prelates and other great lords of this land have well heard. Wherefore it behooves each one to take care. And the King begs all the loyal subjects in his kingdom, in that he has undertaken to make this voyage for the honour of God, of himself, of them, and of the kingdom, and for lasting peace, and for the good of his realm, and [because] he has great faith that the good prayers of his faithful subjects can give much help and serve to bring this [time of] need to a happy end, that they will pray and cause [others] to pray earnestly for him and for those who go with him.

In witness, etc. Given at Udimore the xii. day of August. (Such letters are being sent to all the sheriffs of England.)

—Printed in Rymer's *Foedera*, I, 872-3, from the records of chancery, and Bémont, *Chartes des Libertés*, 79-86; also recorded by Bartholomew Cotton in *Historia Anglicana*, 330-34.

The above translation follows the text given by Bémont.

**IV. Petitions of the *Communitas Regni* to the king in 1297, according to Rishanger, and the king's reply according to Bartholomew Cotton.**

Whilst the king was staying at Winchelsea, there came to him messengers from the earls of his kingdom, putting forward the following petitions:—

These are the grievances which the archbishops, bishops, abbots and priors, the earls and barons, and all the community of the land show to the king, humbly asking him that he will correct and amend these things for his own honour and for the salvation of his people.

Firstly, it seems to all the community of the land that the warning [to attend the king for military service] given them by writ of the king was insufficient, because it did not express a certain place where they ought to go; for they ought to make provision and have money according to the place. And they could not judge whether they ought to do service or not.<sup>1</sup> For it is commonly said that the king wants to cross into Flanders, and it seems to all the community that they ought not to do any service there; for neither they nor their predecessors nor forefathers ever did service in that land.

And even if the fact is that they ought to do service there, as elsewhere,<sup>2</sup> nevertheless they have not the means to do it, for they have been worn down too much with divers tallages, aids, prises, namely of corn, oats, malt, wool, hides, oxen, cows, and salt-meat, without any payment on which they might live. Also they say that they cannot give an aid on account of their poverty, by reason of the aforesaid tallages and prises; for they have scarcely

<sup>1</sup> The French version of Hemingburgh (*Chronicon*, 124) reads *car solom le lu couyent il fere la purveaunce, et puissent aversne le quele il duissent lui fere servis ou nounre*. Luard's reading of Cotton is *et puissent aver sen le quel il deusent la fere le service ou non*.

<sup>2</sup> *Ut alibi*; Hemingburgh has *ou aliours*, an important difference; Cotton has the same as Hemingburgh.

the means to keep themselves alive, and there are many who have no sustenance and cannot cultivate their lands.

Also, all the community of the land feel themselves much grieved because they are not treated<sup>3</sup> [or perhaps “guided”] in accordance with the laws and customs of the land, in accordance with which their ancestors used to be treated; nor do they enjoy the liberties which they were wont to have, but these are arbitrarily put aside.<sup>4</sup>

Also, clerics and laymen<sup>5</sup> feel themselves much aggrieved in that they were wont to be treated according to the articles in Magna Carta, all of which articles have been let go, to the great loss of all the people. Wherefore they ask the king if he will correct these things, to his own honour and to the salvation of his people.

Also the community of the land feel themselves too much oppressed in that the Assize of the Forest is not kept as it used to be; nor are the Charters of the Forest observed; but attachments are made at will, outside the assize, otherwise than used to be.

Also the whole community feels that they are oppressed by the tax on wools, which is too heavy, namely at 40 shillings on the sack, and 7 marks the sack on broken wool; for the wool of England approaches the value of half of all the land, and the tax which is paid on it approaches a fifth of the value of all the land.

But because the community desire honour and safety to the king, as they ought to wish, it does not seem to them that it would be to the king's advantage to cross into Flanders, without being more assured of the men of Flanders, for himself and for his people; and at the same time regarding Scotland which already begins to rebel

<sup>3</sup> The verb used is *tractare*,—*quia non tractantur*; Hemingburgh uses *menes*—*ils ne sont pas menes*; Cotton uses *meneis*.

<sup>4</sup> *Voluntarie excluduntur*; Hemingburgh uses *sount mys hors voluntirement*. Cotton is similar.

<sup>5</sup> According to Cotton, 326 and Hemingburgh, 125; but not according to N. Trevet, *Annales Sex Regum Angliae*, 1135-1307, ed. by T. Hogg (English Historical Society, 1845), 361.

whilst he is in the land, on the point of departure; and it is estimated that [the Scots] will do worse, when they are certain that the king has crossed the sea. Nor is this only the case in Scotland, but also in other lands, which are not, as yet, in their wonted stability.

[This is copied out in W. Rishanger's *Chronica*, 175-6. Hemingburgh's version is in his *Chronicon*, II, 124-6, and there is another French version in Cotton, *De Rege Edwardo I*, 325-7. The best modern edition is that printed by Mr. Edwards in *E.H.R.*, LVIII, 170-72, which supersedes that of Bémont in *Chartes des Libertés*, 77-8. Cotton continues the story (p. 327):]

They proposed also several other articles on behalf of the community which are not given here.

That year, after many and various quarrels, the king conceded to all who owed him service, and to all those having £20 worth of land, that they were not compelled (*teneri*) to go with him to Flanders, except at the wages of and in consideration of the payments by, the king.<sup>6</sup>

In that year and in the same parliament, the king granted that Magna Carta and the Charter of the Forests should be confirmed, if the archbishop, bishops and clergy, in return for that confirmation, would make generous provision for him,<sup>7</sup> and the barons and people would grant him an eighth. [But the clergy could not make any concession to him.]

## V. The *Confirmatio Cartarum* and the *De Tallagio non Concedendo* according to Walter of Hemingburgh.

Whilst such perfidies were being carried out by the Scottish people, the king's councillors who were with the prince, seeing the great danger which threatened not only the king campaigning abroad, but also the whole land of England, urged the king's son, who was staying

<sup>6</sup> *Nisi ad vadia et pro stipendiis dicti domini regis.*

<sup>7</sup> *Si . . . clerus vellent ipsum . . . largiter respicere.*

within the walls of the city of London on account of the danger of sedition, to call upon and request the said earls, namely the marshal and Hereford, who, as it was said, had fallen away, in part from his father, to unity and love of peace. So he sent letters to them, and invited them to his parliament, on account of the fact that he held his father's place in England. They were to come to London, to hold it, on October 10.

They complied with the request of their new governor<sup>1</sup> and future ruler, and they came to him on that day; but they did not come alone, but with fifteen hundred knights and a great force of chosen foot. Nevertheless they would not enter the gates of the city until it was conceded to them that they might first place their own guards in all the city-gates, lest perhaps, if they entered without arms, they might be shut in like sheep in a pen. When this had been granted, they entered.

Whereupon, after many councils and various deliberations, and after the mediation of the venerable father the Archbishop of Canterbury, *magister* Robert Winchelsey, of blessed memory, they would not agree to any other form of settlement but that the king should concede and confirm Magna Carta, with certain articles added, and the Charter of the Forests. And that he would not demand or seek in future any aid or imposition from the clergy or from the people, without the wish and assent of the magnates. And that he would put aside all rancour against them and all their allies. A writing of this kind was ordained, expressed in these words.

*Confirmatio Magnae Cartae* [here follows a copy of the confirmation of the Charters witnessed by Prince Edward at London, 10 October. This is also recorded on the Statute Roll, and a memorandum follows, on the Statute Roll, "Let it be remembered that this same charter, in the same language, word for word, was sealed

<sup>1</sup> *Praeceptor.*

in Flanders under the great seal of the king, that is to say, at Ghent, 5 November . . . and sent to England.”]

This writing was sent to the king in Flanders, so that he might affix his secret seal, his great seal having remained behind with his son. There were also sent transcripts of Magna Carta and the Forest Charters, with the following articles inserted at the end of Magna Carta, so that he might similarly seal these.

*Articuli inserti in Magna Carta.* [Then follows the *De Tallagio non Concedendo.*.]

Also, Edward, son of the king, forgave the aforesaid earls, by letters patent to them and to all their followers, all rancour of mind and ill will; and he promised in the same letters that in every way possible he would induce his father to do the same. All the king’s councillors who were there promised the same, by writing specially drawn up for the purpose, and everybody that day rejoiced. . . . And one and all swore on the holy Gospels, for greater assurance in the matter, that they ought to preserve the said earls with all their followers, unharmed and without loss, against the king.

It was agreed also that they should receive a reply on this point on Saturday December 7, from the king himself, with this added condition, that if the king should send back the aforesaid document sealed, and if he should ratify everything, then the earls would go, at the king’s command, either to the king in Flanders or against his enemies in Scotland, whichever he wished.

Messengers were accordingly sent to the king, and his *secretarii* wrote to him to say that if he intended to preserve and retain his honour, his estate and his kingdom, he would send back all the aforesaid documents, sealed. And he, driven into a tight corner,<sup>2</sup> acceded to their wishes in the matter, after hesitating for three days.

<sup>2</sup> *In arcto positus.*

In order that he might retain their affection,<sup>3</sup> he conceded and duly confirmed everything.

For this confirmation of the aforesaid charters, with the aforesaid additions, the magnates of the land together with the common people<sup>4</sup> gave a ninth of their wealth, the Archbishop of Canterbury with his clergy a tenth and the Archbishop Elect of York with his clergy, who were nearer to the danger, a fifth, in subsidy of the war of the king against the Scottish kingdom. . . .

—From Hemingburgh, *Chronicon*, II, 147-55.

## VI. *De Tallagio non Concedendo*

1. No tallage or aid shall be laid or levied by us or our heirs in our realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of our realm.
2. No officer of ours, or of our heirs, shall take corn, wool, leather, or any other goods, from any manner of person, without the good will and assent of the party to whom the goods belonged.
3. Nothing from henceforth shall be taken in the name or by occasion of *maltolt*.
4. We will and grant for us and our heirs, that all clerks and laymen of our land shall have all their laws, liberties, and free customs, as largely and wholly as they have used to have the same at any time when they had them best and most fully; and if any statutes have been made by us or our ancestors, or any customs brought in contrary to them, or any manner of article contained in this present charter, we will and grant, that such manner of statutes and customs shall be void and frustrate for evermore.
5. Moreover, we have pardoned Humphrey Bohun Earl of Hereford and Essex, Constable of England, Roger Bigod, Earl of Norfolk and Suffolk, Marshal of England,

<sup>3</sup> *Novissime tamen ut corda suorum retineret.*

<sup>4</sup> *Cum communi populo.*

and other earls, barons, knights, esquires, and namely John of Ferrers, with all others being of their fellowship, confederacy, and bond, and also to all other that hold twenty pound land in our realm, whether they hold of us in chief, or of other, that were appointed at a certain day to pass over with us into Flanders, the rancour and ill-will which for the aforesaid causes we conceived against them, and all other offences, if any, that they have done against us or ours unto the making of this present charter.

6. And for the more assurance of this thing, we will and grant, for ourselves and our heirs, that all archbishops and bishops for ever in their cathedral churches, this present charter being first read, shall excommunicate, and in the several parish churches of their dioceses, shall cause to be publicly excommunicated, or to be declared excommunicated twice in a year, all those that willingly do or procure to be done anything contrary to the tenor, force, and effect of this present charter in any point and article. In witness of which thing we have set our seal to this present charter, together with the seals of the archbishops, bishops, earls, barons, and others who voluntarily have sworn that as much as in them is, they shall observe the tenor of this present charter in all causes and articles, and shall extend their faithful aid to the keeping thereof forever.

—From Hemingburgh, *Chronicon*, II, 152-4; printed in *S.C.*, 493-4, in Bémont, *Chartes des Libertés*, 88-9 and in *E.H.R.*, LX., 303-5.

## VII. *Confirmatio Cartarum*

Edward, by the grace of God king of England, lord of Ireland, and duke of Aquitaine, to all who may see or hear these present letters, greeting. Know that, for the honour of God and of the Holy Church and for the benefit of our entire kingdom, we have granted for ourself and for our heirs that the Great Charter of Liberties and the Charter of the Forest, which were drawn up by

the common assent of the whole kingdom in the time of King Henry, our father, are to be observed without impairment in all their particulars. And we will that those same charters shall be sent under our seal to our justices—those of the forest as well as the others—to all sheriffs of counties, and to all our other ministers, as well as to all cities throughout the land, together with our writs providing that the aforesaid charters are to be published, and announcement is to be made to the people that we have granted these [charters] to be observed in all their particulars; and that our justices, sheriffs, mayors, and other ministers, whose duty it is to administer the law of the land under us and through our agency shall cause the same charters in all particulars to be admitted in pleas and judgment before them—that is to say, the Great Charter of Liberties as common law and the Charter of the Forest according to the assize of the forest, for the relief of our people. And we will that, if any judgement is henceforth rendered contrary to the particulars of the charters aforesaid, by our justices, or by our other ministers before whom pleas are held contrary to the particulars of the charters, it shall be null and void. And we will that these same charters shall be sent under our seal to the cathedral churches throughout the kingdom and shall there remain; and twice a year they shall be read to the people. And [we will] that the archbishops and bishops shall pronounce sentences of greater excommunication against all those who, by deed or aid or counsel, shall violate the aforesaid charters, infringing them in any particular or violating them in any way; and the aforesaid prelates shall pronounce and publish these sentences twice a year. And if the same prelates—the bishops or any of them—prove negligent in making the aforesaid denunciation, they shall be reproved in a suitable manner by the Archbishops of Canterbury and

York who at the time hold office, and compelled to make this same denunciation in the form aforesaid.

And whereas some people of our kingdom are fearful that the aids and taxes (mises), which by their liberality and good will they have heretofore paid [*fait*] to us for the sake of our wars and other needs, shall despite the nature of the grants, be turned into a servile obligation for them and their heirs because these [payments] may at a future time be found in the rolls, and likewise the prises that in our name have been taken throughout the kingdom by our ministers; therefore we have granted, for us and our heirs, that, on account of anything that has been done or that can be found from a roll or in some other way, we will not make into a precedent for the future any such aids, mises, or prises. And for us and our heirs we have also granted to the archbishops, bishops, abbots, priors, and other folk of Holy Church, and to the earls and barons and the whole community of the land, that on no account will we henceforth take from our kingdom such aids, mises, and prises, except by the common assent of the whole kingdom and for the common benefit of the same kingdom, saving the ancient aids and prises due and accustomed.

And whereas the greater part of the community all feel themselves gravely oppressed by the *maltolt* on wool—that is to say, 40s. from each sack of wool—and have besought us to relieve them [of the charge], at their prayer we have fully relieved them, granting that henceforth we will take neither this nor any other [custom] without their common assent and good will, saving to us and our heirs the custom on wool, wool-fells, and hides previously granted by the community of the kingdom aforesaid.

In testimony whereof we have caused to be written these our letters patent. Given at Ghent, November 5, in the twenty-fifth year of our reign.

—from the *Statutes of the Realm*, I, 123; printed in S.C., 490-91,  
and in Bémont, *Chartes des Libertés*, 96-8.

### VIII. The promise of Edward I to confirm the Charters, 1299.

After he had celebrated the very sacred festival of Christmas, the king crossed the river Humber and moved towards London in leisurely stages. There he held his parliament at the beginning of Easter, and there a great contention was started by the aforesaid earls, namely the Marshal [Norfolk] and Hereford, about the confirmation of Magna Carta, which the king had often promised to renew and maintain. The king put off his reply from day to day for some time and invented a variety of reasons; but at length, when many had urged him, he said that he must reply on the following day. When morning arrived, however, he secretly departed from the city; but the earls, hearing this, followed him in a great throng, pleading that he would return and make a reply, even a feeble reply, to what had been put forward [*causantes recessum et certae praefixionis quasi ener-vatum responsum*]. To whom the king replied, “Certainly, my dear friends. The impure atmosphere of the city was harming us; that is why we left, that we might pick up a little with a change of air. But you go back to the city and you will get a reply from our council.” But when they returned they received a reply which was not acceptable, but ambiguous [*variabile*]; for the king did indeed confirm the articles which they had demanded from him, but added at the end “saving the right of our crown.” When they heard this [concession] they were displeased and returned to their homes unappeased. The councillors of the king, however, fearing a rising of the people, delivered both charters thus sealed to the sheriffs of London, to be read in public; and they were read to a great gathering of the people in the cemetery of St. Paul’s. When the people first saw the Charters thus sealed, they gave thanks to God and to the king; but when they heard the ungenerous and additional clause, immediately [*improperantes*] they exchanged their blessings for curses.

The council was dissolved and our earls were given, before their departure, a day for reassembly fifteen days after Easter, in which *colloquium*, held at London, the king conceded almost all their requests and accorded to their wishes.

—From Hemingburgh, *Chronicon*, II, 182-3.

#### IX. The bull of Clement V, 1305, absolving Edward I from his oaths to the barons.

Clement bishop, servant of the servants of God to his dearest son in Christ, Edward the illustrious king of England, greeting and apostolic blessing.

. . . Indeed, we have learned lately from a reliable account, that when you were formerly in Flanders, and even before you arrived there, and when you were acting for the protection of your rights against many enemies and rivals, a number of magnates and nobles of your realm, and other persons who were enemies of your name, seized this opportunity, when you were outside the kingdom occupied in opposing your rivals. Unless you had made certain concessions to them, concessions which were varied and harmful, [relating to] the forests and other rights belonging from of old to the crown and the honour of your royalty, and which they had also demanded from you with importunity before you had succeeded to the said realm, they would have conspired against you; they had [already] stirred up the people and disseminated many scandals.

At that time, prudently giving heed to their machinations and wishing to avoid the dangers of the passing time, you made those concessions, more under compulsion than of your own free will.

And when at length you returned to your kingdom, although the wars were not yet finished, those same magnates and others, by importunity and presumptuous insistence, obtained from you the confirmation of those

concessions. Royal letters were sent out in this connection, commanding that sentence of excommunication should be promulgated twice in each year, in all the cathedral churches of the realm, against all who infringed the said concessions, as is more fully and in greater detail contained in the aforesaid letters, sealed with the royal seal.

Accordingly, now that this apostolic see, which esteems the aforesaid realm highly amongst all the kingdoms of the world, and holds both you and it in the closest affection, has learned of these concessions, assumed and granted at the expense of your honour and to the detriment of the royal excellence, we quash and annul and from the plenitude of our power we revoke these concessions and their force, and whatever has arisen from them in any manner, and also the sentences of excommunication which were perhaps promulgated in those churches or elsewhere to ensure their observation. We pronounce them worthless, null and void. We deprive of their force the letters which have been made out by reason of them. We decide that you and your successors, kings of England, are not bound in future to observe them, even if you may have taken an oath to do so; especially since, when you performed the ceremony of your coronation, you took an oath, as it is claimed on your behalf, to preserve the honour and rights of the crown. Or if you have bound yourself on that account to any penalty [if you break your oath], from this and from the guilt of perjury, if you have incurred this, we absolve you also....

But by this we do not intend to take away any right, which was proper to each district of the said kingdom in the above matters, before the concessions which you made.

Let no man infringe or with rash temerity go against

this testament of our revocation annulment voidance, invalidation and determination. . . .

Given at Lyons, the fourth kalends of January, in the first year of our pontificate.

—From Rymer's *Foedera*, I, 978.

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